United States Court of Appeals

for the Second Circuit

APPENDIX

75-6076

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United States Court of Appeals

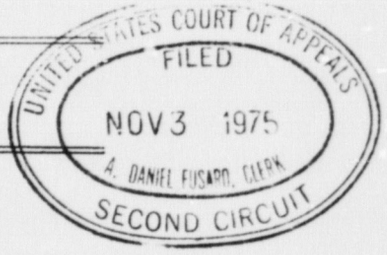
For the Second Circuit.

BAY RIDGE ACTION COMMITTEE, INC., *et al.*,
Plaintiffs-Appellants,

against

THOMAS EKELAND, *et al.*,
Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK.



JOINT APPENDIX.

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THE REPORTER COMPANY, INC., New York, N. Y. 10007—212 732-6978—1975

(7602)

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UNITED STATES COURT OF APPEALS,

FOR THE SECOND CIRCUIT.

----------X

BAY RIDGE ACTION COMMITTEE, INC., *et al.*,

Plaintiffs-Appellants,

-against-

THOMAS EKELAND, et al.,

Defendants-Appellees.

----------X

DOCKET ENTRIES.

75C 477 Bay Ridge Action Committee, Inc. V. Ekeland, et al

DATE	NR.	PROCEEDINGS
4-01-75		Complaint filed. Summons issued. (1)
4-28-75		Notice of appearance for defts Thomas Ekland, George Adams, Howard Smith, Shore Hill Housing, Lu-Med Housing, & Lutheran Medical Center filed. (2)
4-30-75		By BARTLES, J.--Two orders dtd 4-30-75 extending time for defts to answer complaint to 5-7-75 filed. (3/4)
5-01-75		ANSWER filed. (Lee Goodwin) (5)
5-08-75		ANSWER of defts EKELAND, ADAMS, SMITH, SHORE HILL HOUSING DEVEL., SHORE HILL HOUSING CO., LU-MED HOUSING, LUTHERAN MEDICAL CENTER filed (6)
5-15-75		Ffirst set of interrogatories with request to produce filed. (7)
5-19-75		By BARTELS, J.--Order dtd 5-16-75 extending time for deftsLee Goodwin to answer complaint to 4-30-75 (sic) filed. (8)
5-23-75		Notice of motion for preliminary injunction ret 5-30-75 filed. (9)
5-27-75		Affidavit of Neil S. Lovit filed. (10)
5-30-75		AMENDED ANSWER of deft Lee Goodwin filed. (11)
5/30/75		Before BRAMWELL,J.- Case called- Adjd to 6/16/75 for Hearing (12)
6/3/75		By BRAMWELL,J.- Order dated 6/3/75 filed that the time of the defts S. William Green , et al to answer the complaint is extended to 5/30/75 (13)

DOCKET ENTRIES

6/3/75	By BRAMWELL,J.- Order dated 6/3/75 filed that Carla A. Hills is substituted for James T. Lynn as Sec. of U.S. Dept of Housing and the caption is amended. (14)
6/5/75	By BRAMWELL,J.- Order dated 6/4/75 filed that the time for the Shore Hill Defts to serve papers in opposition to the pltff's motion for a prel. injunction shall be extended to 6/13/75 ,etc. (15)
6/6/75	ANSWER of Deft filed. (NYC, Defp of City Planning, & Zuccotti) (16)
06-10-75	Affidavit of Lee Goodwin in opposition to application for a preliminary injunction filed. (17)
06-10-75	Memorandum of law of Goodwin in opposition to motion for a preliminary injunction filed. (18)
06-11-75	ANSWER OF DEFTS HON. HILLS & GREEN FILED. (19)
6-13-75	Memorandum by Shore Hill in opposition to motion for preliminary injunction filed. (20)
6-13-75	Affidavit in opposition filed. (21)
6-16-75	Memorandum of law in oppostion to motion for a preliminary injunction on behalf of defts Hills & Green, and affidavits and exhibits of Hills & Green filed. (22/23)
6/16/75	Before BRAMWELL,J.- Case called- Adjd to 6/23/75
6-23-75	Reply affidavit of Patrick J. Murphy filed. (24)
6-23-75	Pltffs' reply memorandum of law and memorandum of law in support of motion for injunctive relief filed. (25/26)
6-24-75	Stenographer's transcript dtd 6-16-75 filed. (27)
6-27-75	Summons ret and filed/[illegible] executed. (28)
7-7-75	Before DOOLING. J. - Case called & adjjd to 7-10-75 at 10 A.M.
7-10-75	Before DOOLING, J.-Case called. Hearing order and begun on motion for preliminary injunction. Defts move for dismissal. Decision reserved. Trial cont'd to 7-11-75.
7-11-75	Before DOOLING, J. - Case called. Hearing resumed. All parties rest. Hearing concluded.Motion for pltff argued. Deft's move for summary judgment. Decision reserved.
7-25-75	By DOOLING, J.-Memorandum incorporating findings of fact and order denying motion for preliminary injunction dtd 7-25-75 filed. (p/c mailed) (29)
8-18-75	Notice of appeal filed. Duplicate mailed to C of A & defts. jn (30)
8-21-75	Notice of motion ret. 8-29-75 for an order granting leave to amend complaint filed. (31)
8-28-75	Memorandum of Law for motion to amend complaint filed. (32)
8-29-75	Before BRAMWELL, J - Case called. Pltff's motion for leave to amend complaint argued. Decision reserved. All briefs by 9-12-75.
9/2/75	Certified copy of Order filed from the C. of A. that the record be docketed on or before Sept. 12, 1975 (33)

DOCKET ENTRIES

9/8/75	Affidavit of Service by Mail filed. (34)
9-11-75	Memorandum of law of deft Goodwin in opposition to motion for leave to amend the complaint filed. (35)
9/12/75	Memorandum of Law in Opposition to Pltff's Motion for leave to amend complaint filed. (36)
9-15-75	Entire file certified and handed to Patrick J. Murphy to be taken to the C of A. --
9/18/75	Acknowledgment recd and filed from the C. of A. for receipt of Index on Appeal (37)
10-10-75	Stenographer's transcript dtd 7-7-75; 7-10-75; and 7-11-75 filed. (mg) (38/39/40
10-24-75	By BRAMWELL, J.--MEMORANDUM AND ORDER filed. The pltffs' application for leave to amend the complaint is denied without prejudice, with leave to renew (file returned to C of A with certified copy of memo and order.) (41)

A TRUE COPY ATTEST
LEWIS ORGEL, CLERK
BY DEPUTY CLERK

NOTICE OF MOTION FOR PRELIMINARY INJUNCTION.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----------x

BAY RIDGE ACTION COMMITTEE, INC., et al.,

Plaintiffs,

-against-

THOMAS EKELAND, et al,

Defendants.

----------x

75 Civ. 477
(Judge Bartels)

NOTICE OF MOTION FOR PRELIMINARY INJUNCTION

S I R S:

PLEASE TAKE NOTICE that upon the verified complaint herein, the Affidavit of PATRICK J. MURPHY, ESQ., sworn to the day of May, 1975 and exhibits annexed thereto, the affidavit of GEORGE NICOLAIDES sworn to the day of May, 1975, the Affidavit of JAMES VELLA, sworn to the 19th day of May, 1975, and upon the pleadings and proceedings heretofore had herein, plaintiffs will move this Court before the HON. JOHN BARTELS, U.S.D.J., in Room , United States Courthouse, Cadman Plaza, Brooklyn, New York, on 1975 at 2:15 P.M. in the afternoon of that day or as soon thereafter

NOTICE OF MOTION FOR PRELIMINARY INJUNCTION

as counsel may be heard, for a preliminary injunction pursuant to Rules 7(b) and 65 of the Federal Rules of Civil Procedure, enjoining the defendants from:

A. Proceeding with the construction of the Shore Hill Apartments located at 91st Street between Shore Hill and Colonial Road in the Bay Ridge section of Brooklyn.

B. Granting any further or continued financial aid, including disbursement of Federal or State funds, or taking any steps in furtherance of the construction of the Shore Hill Apartments.

This motion is made on the grounds that:

1. Unless restrained by the Court, the defendants will perform acts resulting in irreparable injury to the public and to the plaintiffs as more particularly appears in the verified complaint herein;

2. Defendants are attempting to carry out an unjust plan or scheme in clear violation of law which will result in irreparable injury and damage to plaintiffs, as more particularly appears in the complaint herein and the Affidavit of PATRICK J. MURPHY, ESQ. and accompanying Exhibits annexed thereto.

NOTICE OF MOTION FOR PRELIMINARY INJUNCTION

3. The issuance of said preliminary injunction will not cause undue loss to defendants, but will prevent irreparable injury to plaintiffs.

Dated: New York, New York

May ,1975

PATRICK J. MURPHY
Attorney for Plaintiffs
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Tel.: (212) 371 - 5400

TO: DAVID TRAGER, ESQ.
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JOSEPH M. SUSSILLO, ESQ.
437 Bay Ridge Parkway
Brooklyn, New York 11209

ATTORNEYS FOR DEFENDANTS

AFFIDAVIT OF PATRICK J. MURPHY IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----------x

BAY RIDGE ACTION COMMITTEE, INC., et al.,

Plaintiffs,

-against-

THOMAS EKELAND, et al,,

Defendants.

----------x

75 Civ. 477
(Judge Bartels)

AFFIDAVIT IN SUPPORT OF ORDER TO SHOW CAUSE

STATE OF NEW YORK)
) SS.:
COUNTY OF NEW YORK)

PATRICK J. MURPHY, being duly sworn, deposes and says:

1. I am the attorney for the plaintiffs. I am also a resident of Bay Ridge Section of Brooklyn and am personally familiar with the facts in this case. This Affidavit is made by me not only as attorney for the plaintiffs but upon my own personal knowledge. It is respectfully submitted in support of plaintiffs' application for a tempoary

AFFIDAVIT OF PATRICK J. MURPHY IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION

restraining order against defendants EKELAND, ADAMS, SMITH SHORE HILL DEVELOPMENT, SHORE HILL HOUSING, LUTHERAN, LU-MED, ZUCCOTTI, GOODWIN, LYNN and GREEN, and for a preliminary injunction pursuant to Rule 65 of the Federal Rules of Civil Procedure.

2. The verified complaint, attached hereto as Exhibit "A", seeks to enjoin all said defendants from proceeding with the construction and funding of the Shore Hill Apartments in Bay Ridge, Brooklyn until such time as all said defendants have complied with the statutory and regulatory requirements referred to in the complaint particularly with respect to filing an environmental impact statement required under Section 102(2)(C) of the National Environmental Policy Act, 42 U.S.C. § 4332(2)(1)(NEPA) and otherwise cured other serious violations of U.S. housings law and New York State law complained of therein.

3. Construction of the Shore Hill Apartments constitutes a grave threat to the lives and safety of its intended tenants and the surrounding community of one-family residences because of the lack of adequate

fire safety equipment, fire and smoke alert systems and other security systems specifically necessary for the intended elderly tenant population of its buildings and the families of surrounding homeowners.

4. The construction of the Shore Hill Apartments will irreparably damage plaintiffs and the public because it will degrade the surrounding environment, destroy the aesthetics of the neighborhood, cause air, noise, water and light pollution, result in serious sanitation, sewage, electrical power and traffic disorders in the area and frustrate the purposes of the statutes and regulations referred to in the complaint.

5. The public will be further damaged by the unjust use of Federal and State funds. Defendant LUTHERAN has contrived to sell the site for the construction for the artificiallyinflated price of $2.2 million, equivalent to $825,000 per acre for the 2.7 acres of unimproved land to be used for the project. The ostensible purchaser is Shore Hill Housing, a corporation dominated and controlled by LUTHERAN, and the assets of which could be distributed back to LUTHERAN by the simple expedient of liquidation

AFFIDAVIT OF PATRICK J. MURPHY IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION

and dissolution. The $2.2 million to be paid LUTHERAN will be paid from State assisted and Federally subsidized mortgage and construction funds, to the great financial burden of the taxpaying public.

6. Defendants LYNN and GREEN have been led to enter a contract with the corporate defendants which would provide an annual subsidy of at least $1.2 million for 40 years from federal funds to the project and have issued other governmental approvals necessary to carry out the construction on the basis of misleading and other wrongful misrepresentations made in the application for such funds and approvals.

7. These actions by defendants have been taken in clear disregard of the fact that in respect of this "major Federal action[s] significantly affecting the quality of the human environment" defendants have failed to file the Environmental Impact Statement required under the provisions of the National Environmental Policy Act, § 102(2)(C) and the regulations of the U.S. HOUSING & URBAN DEVELOPMENT DEPARTMENT (HUD).

AFFIDAVIT OF PATRICK J. MURPHY IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION

The succeeding paragraphs of this Affidavit will show a clear probability of plaintiffs' success on the merits of these claims.

FACTS

8. The relevant facts are fully set forth in the verified complaint and need not be repeated here. It bears reiterating, however, that failure to comply with the provisions of NEPA constitutes a serious threat to the public welfare and otherwise portends irreparable injury to the public, for which reason the NEPA specifically directs that the actions, practices and procedures of all agencies and instrumentalities of the United States shall be made to conform to the overriding national interest and policies underlying the enactment of the NEPA, § 102(2) of NEPA.

VIOLATIONS OF NEPA

9. As more fully set forth in the complaint with respect to a "major federal action" such as the Shore Hill Apartments, the provisions of the NEPA, Sections thereof place upon the defendants the mandatory obligation of causing an environmental impact statement to be prepared,

submitted and approved as satisfactory or equivalent evidence to be produced necessary to comply with the provisions of the NEPA. Hanly v. Mitchell 460 F. 2d 640 (2d Cir. 1972); Hanly v. Kleindienst, 471 F. 2d 823 (2d Cir. 1972) cert. den. 412 U.S.(909); Jones v. Lynn, 477 F. 2d 885 (1st Cir. 1973); Boston Waterfront Residents Assoc. v. Romney, 343 F. Supp. 89 (D. Mass. 1972)

10. The failure of the defendants to prepare an impact statement with respect to this project is a clear violation of the National Environmental Policy Act (NEPA). There can be no question that the proposed construction falls within NEPA's purview since it is an integral part of a federally-approved project designed with 556 apartments involving a capital cost of at least $23 million calling for a federal subsidy of over $1.2 million per year for 40 years and affecting a community of over 250,000 people in the proximate area surrounding the project and is a "major action" with "significant" environmental effects. Hanly v. Kleindeinst, 470 F. 2d

823, 830-31 (2d Cir. 1972), cert. den. 412 U.S. 909; (Hanly II); Smith v. City of Cookesville, 381 F. Supp. 100 (M.D. Tenn. 1974); Council on Environmental Quality, Preparation of Environmental Statements: Guidelines, § 1500.6 (a) (1973).

11. Even when viewed in isolation, the construction of the two towering high-rise buildings such as Shore Hill Apartments in the midst of a community of essentially single family homes would require NEPA compliance. Section 101(a) of the NEPA declares it to be a primary goal of the statute to "create and maintain conditions under which man and nature can exist in productive harmony" and, "assure for all Americans safe, healthful, productive and aesthetically and culturally pleasing surroundings; attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences". This policy, which helps define the terms "major" and "significant", Smith, supra. at 109, infuses the Shore Hill Apartments with that degree of importance necessary to implement NEPA c.f. Boston Waterfront, supra; James v. Lynn, 6 ERC 1968 (D.C. Colo. 1974). This is

specifically so in light of the Second Circuit's holding that the quality of urban life is an environmental factor which should be a focal point for consideration under NEPA. Hanly v. Mitchell, 460 F. 2d at 647 (2d Cir. 1972) (Hanly I), cert. den. sub. nom. Hanly v. Kleindeinst, 409 U.S. 990.

12. Even if the planned construction of the Shore Hill Apartments were not a major action with significant environmental effects, defendants have made no documented findings as to whether an impact statement is necessary. This failure is inconsistent with the Second Circuit's repeated admonition to administrative agencies to "affirmatively develop a reviewable environmental record--[and that] perfunctory and conclusionary language simply does not suffice, even for purposes of a threshold Section 102(2)(c) determination". Hanly I, supra, at 647, See also Hanly II, supra.

13. In addition, defendants have an obligation, under Section 102(2)(d) of NEPA, to "study, develop and describe" alternatives to the proposed construction of Shore Hill Apartments in order to mitigate or avoid the

adverse effects plaintiffs would otherwise suffer. Hanly II, supra. at 834-35. In the instant case, plaintiffs and others have suggested responsible alternatives to construction of Shore Hill Apartments as presently designed (See attached Exhibit "B") and the plaintiffs have repeatedly expressed their interest in creating housing of a low-rise nature with low density impact and have urged the feasibility of such alternatives in public meetings before the local planning boards, the City Planning Commission and Board of Estimate of the City of New York and the New York State Division of Housing and Community Renewal. Rather than seriously attempting to "study", "develop" or even "describe" these alternatives, defendants have dismissed them perfunctorily, without providing any detailed reasons or analysis therefor. For this reason alone, the proposed construction must be enjoined.

VIOLATIONS OF HUD REGULATIONS

14. Section 5(a)(4) of defendants GREEN and LYNN's own regulations direct that "to the maximum extent practicable", environmental clearances are required

"for uncompleted projects which have never gone through an environmental clearance under NEPA". Such a clearance is required as soon as HUD takes "significant" action ("such as the next stage of program approval or approval of a major amendatory"). The Regulations provide that, in such instances, "[i]t is also important that account be taken of environmental consequences not fully evaluated at the outset of the project". Similarly, the Regulations require updated environmental clearance be undertaken when "additional information with significant implications for environmental impact...not previously considered is discovered during the review process...A new finding shall then be made on the basis of all information, and action taken accordingly". §5a(9)(a).

15. Notwithstanding these requirements, neither HUD or the other defendants have prepared an environmental clearance adequately dealing with the community's complaints (See Exhibit "B" and Exhibits "C" and "D" attached) as to the serious fire hazards, sanitation and sewage problems, traffic congestion and crime-provoking-lack-of-security, predictable should the Shore Hill Apartments to be

built as presently designed. Plaintiffs have cited these complaints at public meetings and before public bodies and have been joined therein by community groups, including church groups, senior citizen civic improvement associations, home-owner and block associations, parents and other concerned citizens of Bay Ridge. In fact the local community planning board has voted against the construction of the Shore Hill Apartments every time it has been presented to it for approval. Based largely on these objections, it is clear serious opposition has existed and continues to exist against the construction as designed. This opposition has persisted since October 1972 and has been demonstrated in various forms including the signing of 10,000 petitions sent to defendants LYNN and ZUCCOTTI stating opposition to the project. Under HUD Regulation &5a(3), the existence of controversy concerning the effects of a proposed action provides a strong basis for requiring a "more comprehensive clearance procedure that would otherwise be initiated". Notwithstanding that the planned construction has encountered significant

community opposition, the defendants have by no stretch of the imagination prepared a "comprehensive" environmental review of the planned construction of Shore Hill Apartments.

CONCLUSION

16. Plaintiffs are residents of the community and the natural plaintiffs are homeowners as well.

17. Because construction is now in progress, to the extent that for the last 7 weeks the contractor has been preparing the foundation, the threat of irreparable damage has become immediate and imminent. Furthermore, the plaintiffs have exhausted their administrative remedies and have no adequate remedy at law except this proceeding to the Court.

AFFIDAVIT OF PATRICK J. MURPHY IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION

WHEREFORE, it is prayed that the plaintiffs' application be granted in all respects.

PATRICK J. MURPHY

Sworn to before me this

day of May, 1975.

Notary Public

EXHIBITS, ANNEXED TO AFFIDAVIT OF PATRICK J. MURPHY.

BAY RIDGE ACTION COMMITTEE

P.O. BOX 2[illegible], FORT HAMILTON STA[illegible] BROOKLYN, NEW YORK 11209

For Information Call:
(212) 371-5400
Patrick J. Murphy,
General Counsel

FOR IMMEDIATE RELEASE

Bay Ridge Action Committee called upon the City Planning Commission to propose a quality, low rise garden apartment complex or other similar multi-family housing development for the Shore Hill Project. In a letter to the full commission, BRAC asserted the questionable financial plan for the present proposal added further substance to the overwhelming community opposition presented at the public hearing on December 3, 1973.

Shore Hill, as any other Mitchell-Lama, will be subject to uncontrolled and rising rentals. If the elderly are forced out by high rents, the buildings' small housing units will not attract market rents. Future use of the building would then be a threat.

Patrick J. Murphy, counsel to BRAC, added the following commentary on the discussion held at Ft. Hamilton High School:

> "For those with sufficient vision and compassion, the fair and equitable resolution of the Shore Hill debate should now be in sight. A solution serving both the just needs of the elderly and the legitimate interests of the community represents the only solution possible in a democratic community.
>
> "The community recognizes that a place should be made for those who having borne the labor and the heat of the day come to their senior years with limited financial means. Assistance in the form of subsidized housing is not an unreasonable claim upon the community although many might question whether eleemosynary public works should be carried out on prime tax bearing land. Clearly, however, publicly assisted projects cannot succeed where they override, threaten and destroy the homes and savings, and laboring efforts of the surrounding community.

EXHIBITS, ANNEXED TO AFFIDAVIT OF PATRICK J. MURPHY

BAY RIDGE ACTION COMMITTEE
P.O. BOX 211, FORT HAMILTON STATION, BROOKLYN, NEW YORK 11209

"Low rise, multi-family or garden apartment complexes would serve both these interests admirably.

"Of course, this might produce some frustrated expectations elsewhere. For example, the sponsors might be asked to take a fair price for their land instead of the inflated and swollen figure for which they are playing. Indeed, in a lucid moment regarding the avowed charitable purposes for which it was founded, the LMC might be led to contribute the land to the project. Considering that it has already been the recipient of a $10 million gift relative to the AMF property at the taxpayer's expense, this would be little enough repayment to the taxpayers.

"In addition, some in the community who wish to sell their homes and bank $50,000 or $60,000 may have to be reminded that they are not the natural objects for which subsidized housing is intended. Those who own valuable homes should not ask the taxpayers for subsidies to live at their neighbor's expense.

"Certain real estate interests seeking to profit from such property turnovers must also be thwarted. Tactics amounting to blockbusting have been seen recently in the community and must not be allowed to grow and flourish."

Shore Hill can make a contribution towards meeting the legitimate housing needs of the elderly in the community who are pressed financially. Shore Hill cannot obviously meet all those needs. A low rise project providing 250 to 300 units is the best that it can yield. The attempt to force an additional 150 to 200 marginal units of housing out of the Shore Hill property through high rise construction is a prescription for disaster. The social cost of those marginal units is too great for the community to bear and for this reason all the proposals for Shore Hill advanced heretofore have been unacceptable. If right reason is brought together with good will, however, the community may yet be served.

EXHIBITS, ANNEXED TO AFFIDAVIT OF PATRICK J. MURPHY

BAY RIDGE ACTION COMMITTEE

P.O. BOX 211, FORT HAMILTON STATION, BROOKLYN, NEW YORK 11209

For Information Call:
680-5575
745-1632

January 21, 1974

Mr. T. N. Hurd,
Secretary to the Governor
State of New York
Executive Chamber
Albany, N. Y. 12224

Re: Shore Hill/HUD Section 236

Dear Sir:

We regret that the Housing Division and Community Renewal Division has seen fit to ramrod the Shore Hill Project through the City Planning Commission over the deep-seated opposition of the community.

Please be advised that the Local Community Planning Board has four times consecutively rejected this high rise construction proposal. The community will accept only a low rise project.

We deem it greatly impolitic for this Administration's housing officials to run over the sentiments of the community in this paternalistic and authoritarian manner. That it should happen to the constituency of Bay Ridge of all places is somewhat incredible. We urge Governor Wilson to re-examine the merits and other apsects of this problem very closely. Commissioner Goodwin particularly should re-examine the matter in this light. Her performance at the public hearing held at Ft. Hamilton High School on December 3, 1973, revealed in her a lack of true understanding of this problem. Perhaps this is understandable considering the shortness of her tenure to date but nonetheless, her position must not be allowed to remain uncorrected.

Very truly yours,

PATRICK J. MURPHY
General Counsel

PJM:ob

EXHIBITS, ANNEXED TO AFFIDAVIT OF PATRICK J. MURPHY

BAY RIDGE ACTION COMMITTEE

P.O. BOX 211, FORT HAMILTON STATION, BROOKLYN, NEW YORK 11209

For Information Call:
212-371-5100

December 7, 1973

John E. Zuccotti, Chairman
Martin Gallent, Vice Chairman
Commissioner Sylvia Deutsch
Commissioner Gerald R. Coleman
Commissioner Chester Rapkin
Commissioner Gordon Davis
Commissioner Alexander Cooper
City Planning Commission
2 Lafayette Street
New York, N. Y. 10007

Re: Shore Hill

Dear Commissioner:

At the public hearing on December 3rd, the City Planning Commission heard the overwhelming opposition to the Shore Hill project and potential future high rise proposals in the community surrounding Shore Hill. The opposition voiced a concern for the preservation of stable communities resounding with and reflective of criteria outlined by the recent report of the Urban Design Council on the same issues.

A special concern also appears as to the soundness of the proposed financing for the project. Based on construction estimates worked up by the State Division of Housing in March 1973 great doubt exists as to whether two buildings can be built at Shore Hill as proposed at a cost equal to that recently estimated for the construction of one building containing approximately the same total housing units. Indeed, considering the effects of inflation on the State's March 1973 estimate of $13.7 million in prime construction cost for one 14-story building, it is clear that two buildings cannot be constructed for $14.2 million as proposed.

Resultant rentals for the housing units are in consequence seriously understated. By reason of the foregoing, rental levels may be produced which do not qualify for HUD Section 236 subsidies. This ineligibility, along with other apparent defects in the Section 236 application for Shore Hill, may result in an unjustified reliance on governmental subsidies which shall not be forthcoming.

EXHIBITS, ANNEXED TO AFFIDAVIT OF PATRICK J. MURPHY

BAY RIDGE ACTION COMMITTEE
O BOX 211, FORT HAMILTON STATION, BROOKLYN, NEW YORK 11209

December 7, 1973

In view of the fragile financial premises of the Shore Hill plan, the peculiar interior construction of the proposed buildings gives even greater pause as to the viability of the project. As you know, the housing units are not designed for family living. The housing units are special purpose, small units amounting to single room occupancy quarters. Should the tenants, a group with a flat income curve, be forced out because of inability to meet rental charges rising considerably above those set in the plan, the future of the buildings would be in doubt. Either rental subsidies from presently unknown sources would have to be found or a new use would have to be provided for the building. Clearly, unsubsidized tenants would not pay market rentals for such unattractive and cramped housing at rates going over $100 per room. The character of the community is thus threatened by a potential non-family residential future use.

For all of the foregoing and more reasons, the Shore Hill project must be reconsidered and reproposed on a more realistic basis. As we stated at the public hearing, multi-family low rise housing, not altogether unlike that set for Northside in Brooklyn, might be an alternative. At the very least, it is the proper direction if housing for the elderly is to be obtained consistent with the need to preserve and maintain the surrounding community.

Very truly yours,

PATRICK J. MURPHY
General Counsel

PJM:eb

EXHIBITS, ANNEXED TO AFFIDAVIT OF PATRICK J. MURPHY

November 13, 1973

Hon. S. William Green
Department of Housing and Urban Development
26 Federal Plaza
New York, N.Y. 10007

Re: HUD Section 236 Shore Hill Project

Dear Mr. Green:

Our letter of October 16, 1973 to you, attempted to outline some specific objections held by the community to the above referenced applicant for Section 236 subsidy.

In this connection, we refer to your letter of August 28, 1973, to Senator Buckley, wherein your office affirms that under HUD procedures communities are to be protected from destructive consequences flowing from certain projects seeking Section 236 subsidies.

Our representatives have arranged a meeting with your staff to elaborate on the specific defects and other causes for denying Section 236 subsidies to the Shore Hill Project. In this connection, you may be interested in the following:

1. The Community Planning Board on October 29, 1973, by a vote of 17 to 1, rejected the Shore Hill proposal as undesirable high-rise construction out-of-keeping with the character of the community.

2. The City Planning Commission Chairman John E. Zuccotti, in a letter to the New York Times, copy of which

EXHIBITS, ANNEXED TO AFFIDAVIT OF PATRICK J. MURPHY
November 13, 1973

To: Hon. S. William Green -2-

is attached, expanded on the criteria and reasons for disapproving high-rise construction in communities of single family residences such as Bay Ridge.

Very truly yours,

PATRICK J. MURPHY
General Counsel

PJM:bt
Encl.

cc: Mr. Walter Johnson
Assistant Regional Administrator
Housing Production Mortgage Credit

EXHIBITS, ANNEXED TO AFFIDAVIT OF PATRICK J. MURPHY

BAY RIDGE ACTION COMMITTEE
P.O. BOX 211, FORT HAMILTON STATION, BROOKLYN, NEW YORK 11209

OCTOBER 29, 1973
FOR IMMEDIATE RELEASE

For Information Call:
PATRICK J. MURPHY
GENERAL COUNSEL
Tel. No. 212-371-4700

For purposes of Community Planning Board No. 10's meeting with members of the City Planning Commission and the State Housing and Development Division, the Bay Ridge Action Committee posed the following six questions necessary for answering in respect of an analysis of the Shore Hills project:

1. In view of the fact that the new proposal would cost an additional $2 million for two 22-story buildings with 10-story wings why shouldn't this $2 million of taxpayer money be used to design high quality, low rise, garden type apartments instead or other similar low rise construction for the elderly?

2. Why was a project designed having apartments that average only 520 sq. ft. and constituting nothing more than glorified walk-in closets allowed when with the additional $2 million, low rise construction with more spacious units could have been proposed?

3. Why was this revised design with its increased fire hazards resulting from the 22-story elevations insisted upon when low rise construction would eliminate fire hazards?

4. Why was high rise construction proposed without security personnel and other physical protections for the elderly when low rise construction usually does not have these problems to begin with?

EXHIBITS, ANNEXED TO AFFIDAVIT OF PATRICK J. MURPHY

BAY RIDGE ACTION COMMITTEE
P.O. BOX 211, FORT HAMILTON STATION, BROOKLYN, NEW YORK 11209

5. Why were the health, fire and security problems compounded through lack of adequate elevator systems when low rise construction would not even require such systems in the first place?

In short BRAC asked why the authorities blindly pursue the goal of high rise construction in the face of more economical, safer and better low rise construction alternatives.

Is it because the state housing people are concerned only with their own programs? Is it because a sufficiently large structure must be built to justify the payout of $2 million to Lutheran Medical Center and to satisfy the other real estate and financial interests who will profit from such a project?

EXHIBITS, ANNEXED TO AFFIDAVIT OF PATRICK J. MURPHY

BOX 211, FORT HAMILTON STATION, BROOKLYN, NEW YORK 11209

OCTOBER 23, 1973
FOR IMMEDIATE RELEASE

FOR INFORMATION CALL:
PATRICK J. MURPHY
General Co[illegible]
212-[illegible]

The Bay Ridge Action Committee today called upon [illegible] to break up the cynical conspiracy between the State Housing Authority and Lutheran Medical Center designed to ramrod the unwanted Shore Hill high rise development into Bay Ridge over the community's objection.

BRAC also insists that the Governor [illegible] the housing authorities to push for a low rise, low cost housing development for the elderly. According to BRAC the community wants a quality housing development, one that will serve the housing needs of the elderly while maintaining the character and enviornment of the community, not the special interests and special leading of arrogant bureaucrats and selfish institutions.

In the light of the questionable, not to say unsavory legislative and bureaucratic origins and history of the project, the recent revision hatched behind closed doors and put forth with suddenness and surprise comes trailing the faint odor of unseemly collusion on behalf of special interest. To prevent the "watergating" of Bay Ridge, the Governor should step in to protect the community.

BRAC condemns the silent conspiracy which worked out the grotesque proposal for twin 22-story buildings with 10 story wings. This latest brazen affront makes it clear to all that BRAC and the community have been right in their criticisms of the Shore Hill project.

EXHIBITS, ANNEXED TO AFFIDAVIT OF PATRICK J. MURPHY

BOX 211, FORT HAMILTON STATION, BROOKLYN, NEW YORK 11209

Now the pretense is gone. The State Housing authorities want to spend $2 million more on the new proposal. Previously, they obtained their limited financing ruled out low rise housing. Clearly their desire to impose high rise construction in Bay Ridge has become overriding concern not the cost or even the cost overruns of the project. Indeed, State Housing's track record in holding down the cost to the taxpayers of housing projects amounts to a bitter joke.

As for the sponsors, their motives were always transparent. Now, even LMC admits that its interest does not extend beyond the $2 million it seeks from the project. Again, the pretense is gone - no charity and no love here, just give her the money and she will be gone!!

The community in Bay Ridge insists that low cost, low rise housing for the elderly is not only desirable but attainable. Hoboken, New Jersey, for example, recently opened low rise, low cost housing for the elderly. If Hoboken, New Jersey can produce such housing, it surpasses understanding why it cannot be done in Bay Ridge.

BPAC urges the City Planning Commission to look to their own criteria in judging this project. Recently they announced they would oppose buildings over 18 stories on Madison Avenue in Manhattan. How can they approve 22-story high risers in the midst of a community of single family homes in Bay Ridge?

Having already in effect rejected the first two Shore Hill proposals, how can they approve this latest and greatest monstrosity?

EXHIBITS, ANNEXED TO AFFIDAVIT OF PATRICK J. MURPHY

P.O. BOX 211, FORT HAMILTON STATION, BROOKLYN, NEW YORK 11209

FOR INFORMATION CALL:
PATRICK J. MURPHY
General Counsel
212-371-1100

October 23, 1973

Honorable Nelson A. Rockefeller, Governor
[illegible] West 57th Street
New York, N. Y. 10019

Dear Governor Rockefeller:

[illegible] Shore Hill controversy in Bay Ridge, Brooklyn. On behalf of the more than 10,000 residents who have gone on record against this destructive high rise proposal, we ask that you move to prevent the State Housing Authorities from blindly pursuing their [illegible] bureaucratic goals and dictates over the best interests of the community.

Without overcrowding the space permitted in a short letter, to cover the manifold facets of this project, let us simply say that it is one that urgently requires your attention and that of your staff. This City, this community needs to retain its character and the quality of its environment. It is simply a residential community and in the specific area affected, a community of single family homes. Into this area, the Housing authorities, in league with the sponsor, seeks to build a grotesque and overwhelming high rise, consisting of two 33-story buildings. As the enclosed clipping from the columns of the New York Daily News will suggest, there is as much that is reprehensible behind the scene as that which would meet the eye should this project be permitted to go forth.

We also enclose for your information a copy of our Information Release dated October 23, 1973.

We should appreciate hearing from your staff in order to more fully brief your office on the matter.

Respectfully submitted,

Patrick J. Murphy
General Counsel

PJM:ch
Enc.
cc: Hon. Nelson A. Rockefeller,
Albany

EXHIBITS, ANNEXED TO AFFIDAVIT OF PATRICK J. MURPHY

BOX 211, FORT HAMILTON STATION, BROOKLYN, NEW YORK 11209

For Information Call:
212-871-5300

October 16, 1973

John E. Zuccotti, Chairman
Martin Gallent, Vice Chairman
Commissioner Sylvia Deutsch
Commissioner Gerald E. Coleman
Commissioner Chester Rapkin
Commissioner Gordon Davis
City Planning Commission
2 Lafayette Street
New York, N. Y. 10007

Re: Shore Hill

Dear Commissioner:

On behalf of the more than 10,000 residents of Bay Ridge represented by D.A.C., we protest the public hearing date scheduled for the revised Shore Hill announced for November 7, 1973. As we understand the City Planning Commission's announcement, a substantially revised design has been submitted by the sponsors.

Clearly, given the shortness of time permitted, the community will have no opportunity to critically review the new proposal. Accordingly, it will be at one and the same time denied the opportunity to intelligently praise what may be praiseworthy in the new proposal and criticise what is worthy of condemnation on the other hand.

May we recommend to the point of insistence that a date be set no sooner than six weeks following a time when the sponsor has publicly disseminated sufficient information regarding its new proposal. Only in this way may the community have a fair chance to be heard.

Very truly yours,

Patrick J. Murphy
General Counsel

PJM:eb

EXHIBITS, ANNEXED TO AFFIDAVIT OF PATRICK J. MURPHY

August 23rd, 1975.

Hon. James T. Lynn, Secretary
Housing and Urban Development Department
Washington, D.C. 20410

Hon. James L. Buckley
Senate Office Building
Washington, D.C. 20510

Re: HUD § 236/ Bay Ridge, Brooklyn

Gentlemen:

In the proposed Shore Hill project, the citizens of Bay Ridge have cause to support the indicated and reported changes in direction for the Federal Housing programs. We believe switching subsidies to lower income families away from developers of land will produce better housing. Accordingly, we trust the Shore Hill project shall be denied HUD Section 236 Subsidies.

Over 10,000 residents of the community have expressed and demonstrated their opposition to Shore Hill in the public forums and before local governmental bodies. The grounds for this opposition are as equally broad and encompassing.

Shore Hill, even under the performance levels of present publicly assisted housing programs, reveals itself as inferior housing at extravagant costs. Built as proposed, morecver, Shore Hill would subject its occupants to unacceptably high risks of criminal attack and hazard from fire. The size and density of the project, finally, constitute an environmental disaster for the community as well.

This community supports subsidy programs which will (i) produce good housing at economically justifiable costs; (ii) will subsidize low income families, not builders and developers; and (iii) will give a hope of rationalizing housing conditions in the country and restoring a market economy in housing.

Very truly yours,

EXHIBITS, ANNEXED TO AFFIDAVIT OF PATRICK J. MURPHY

BAY RIDGE ACTION COMMITTEE
P.O. BOX 211, FORT HAMILTON STATION, BROOKLYN, NEW YORK 11209

3. Shore Hill will have no security protection or services provided, meaning that an elderly population will be at the mercy of muggers and other criminals lurking in the remote, isolated corridors.

4. No medical or social services are included in the project rental.

5. No funding exists for any medical or social services for the building.

6. Rental increases will occur as operating and construction costs rise.

7. The cost of any medical or social services if ultimately provided will directly raise the tenants' rent.

8. The rents in Shore Hill will be in no way controlled or stabilized, the tenants will face constantly rising rents.

9. Maintenance and sanitation is inadequate inasmuch as only one porter is provided for each 1,000 residents, not including visitors.

10. Only one elevator for each 300 residents, not including visitors, is provided.

11. Only one parking space for each 9 residents, not including visitors, is provided.

EXHIBITS, ANNEXED TO AFFIDAVIT OF PATRICK J. MURPHY

Failing to comply with this act demonstrating that they are not exploiting the elderly, BRAC challenged LMC to answer the following questions:

Why the sponsor (LMC) should be permitted to gain $2,000,000 from taxpayers' Mitchell-Lama money through an artificial sale of the land?

Why 1,000 surrounding home owners should suffer an estimated $10,000,000 loss in the value of their homes resulting from the overcrowding, environmental pollution and destruction of the neighborhood character caused by a 16 story hi-rise, 520 feet in length?

Why single-room occupancy hi-rise apartments costing over $30,000 per unit shall be built when more spacious low-rise apartments can be constructed for as much as 40% less?

BRAC also challenged LMC to admit that:

1. A hi-rise over 8 stories such as Shore Hill involves a distinct fire hazard, particularly to a building populated with the elderly.

2. Fire Department equipment is inadequate above 8 stories, meaning that the danger from heat and smoke become even more dangerous than flame itself.

EXHIBITS, ANNEXED TO AFFIDAVIT OF PATRICK J. MURPHY

BAY RIDGE ACTION COMMITTEE

P.O. BOX 211, FORT HAMILTON STATION, BROOKLYN, NEW YORK 11209

June 26, 1973

FOR IMMEDIATE RELEASE

FOR FURTHER INFORMATION
PATRICK J. MURPHY
212-[illegible]

Bay Ridge Action Committee today challenged Lutheran Medical Center to contribute the land for the Shore Hill site. BRAC charged that LMC's attempt to "bail out" $2,000,000 from the project by a non-arm's length sale was artificially increasing the cost of the project. By contributing the land $2,000,000 could be saved, permitting construction of safe and livable apartment units in a low-rise building or buildings, according to BRAC.

Only in this way can LMC demonstrate that it is not merely exploiting the elderly for its own financial purposes, charged BRAC. In view of the fact that LMC has already had a $10,000,000 windfall, by their own admission, as a result of the donation by the City of the former AMF plant, LMC should forego the financial gain involved from the sale. The property should be contributed so that suitable housing for the elderly harmonious with the community's interest can be built. This can be done by reducing the cost $5,000 to $6,000 per unit in one swoop by a contribution of the property.

EXHIBITS, ANNEXED TO AFFIDAVIT OF PATRICK J. MURPHY

May 30, 1973

John Zuccotti, Esq.
Chairman, The City Planning Commission
2 Lafayette Street
New York, N. Y. 10007

Re: Shore Hill/I-Med

Dear Mr. Zuccotti:

As a concerned citizen of Bay Ridge, I wish to convey to you my deep-seated opposition to the proposed Shore Hill development. Extending as it does an additional 120 feet in length, the proposed 16 story structure now represents an even greater environmental threat to the community than it formerly did.

The State Housing Finance and Community Renewal bureaucracy, in attempting to foist this ill-considered project upon the community, demonstrates its complete lack of concern for the wishes of the community at large. This contemptuous attitude is expressed in the comment of a state housing official that "It is about time Bay Ridge had hi-risers."

I share the opinion of over 10,000 Bay Ridge residents who have gone on record in opposing Shore Hill. We cannot favor hazardous, insecure, cramped, and isolated housing, particularly for the elderly of the community. Only housing that is sufficiently spacious, safe, and in harmony with the surrounding community can be accepted.

Please join with us in the fight to preserve neighborhoods generally and the quality of life in Bay Ridge in particular. We do not believe the housing goals of our City can be achieved through the destruction of viable communities.

Very truly yours,

EXHIBITS, ANNEXED TO AFFIDAVIT OF PATRICK J. MURPHY

BOX 211, FORT HAMILTON STATION, BROOKLYN, NEW YORK 11209

FOR IMMEDIATE RELEASE

For information call
Patrick J. Murphy, Esq.
General Counsel
(212) 371-5100

Denouncing it as "Warehousing for the Elderly," the Bay Ridge Action Committee today rejected the revised Shore Hill Project. According to the BRAC, a poorly designed, poorly planned and wastefully expensive project such as Shore Hill cannot be approved for the community, merely on the stated pretext of helping the elderly. However laudable that sentiment, a social project must deliver real not illusory benefits to the elderly; must serve the community, not threaten it; and must do so at acceptable costs to the general public which is asked to finance it 100%.

Upon analysis, BRAC insists the revised 520 feet long, 16 story building fails to meet these tests. In BRAC's view, the revised proposal is actually worse than the despised 22 story predecessor which the sponsor has withdrawn. The following unacceptable deficiencies remain in the revised proposal:

EXHIBITS, ANNEXED TO AFFIDAVIT OF PATRICK J. MURPHY

O. BOX 211, FORT HAMILTON STATION, BROOKLYN, NEW YORK 11209

1. Apartment units are too drab and cramped; the average apartment unit measures only 20 x 30 feet. Designed as they are, the apartment units become one room cubicles with no more living space than a small hotel room.

2. The basic floor plan [illegible] a single narrow corridor 520 feet in length. Designed in this fashion, floor upon floor, cubicle after cubicle, an institutional warehouse for the living energies as the result.

3. The threat of mental depression, isolation and health hazards from fire, and physical assault in these under-protected minimum standard units constitute undesirable living standards and conditions for the elderly.

4. In view of the fact that Shore Hills' rents will rise an average of 10%-25% annually, senior citizens will not be helped by exchanging spacious rent-controlled housing for dangerously inadequate quarters costing as much or more.

BRAC contends that the sponsor refuses to propose a more moderate building of, for example, 12 stories, 250 feet in length because of its special interest surrounding the project.

EXHIBITS, ANNEXED TO AFFIDAVIT OF PATRICK J. MURPHY

P.O. BOX 211, FORT HAMILTON STATION, BROOKLYN, NEW YORK 11209

BRAC asserts that its builders have assured it that such a building could be built at the same cost set for Shore Hill. However, because of a combination of the sponsor's need to obtain $2,000,000 from the sale of the land to the housing corporation and the State Housing Authority's insistence that as many units as possible be opened to bolster their housing programs and goals, the community is being confronted with an oversized, overexpensive and dangerously inadequate facility.

BRAC states that opposition to Shore Hill will continue until a better solution is advanced and found. BRAC calls upon the community to reject unreasonable proposals as offered by the sponsor. BRAC insists the sponsor offer a building that will provide standard apartment units of at least 900 square feet for a one-bedroom apartment, in a building of a size and density that will not be an environmental disaster to the community at large.

AFFIDAVIT OF JAMES VELLA IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----------x

BAY RIDGE ACTION COMMITTEE, INC., VINCENT DeANGELIS, FELIX CUCURU and PAUL LANG,

Plaintiffs

-against-

75 Civ. 477
Judge Bartels

THOMAS EKELAND, GEORGE ADAMS, HOWARD SMITH, SHORE HILL HOUSING DEVELOPMENT FUND CO., SHORE HILL HOUSING INC., LUTHERAN MEDICAL CENTER, NEW YORK CITY DEPARTMENT OF CITY PLANNING and JOHN ZUCOTTI, as CHAIRMAN OF THE CITY PLANNING COMMISSION OF THE CITY OF NEW YORK, THE NEW YORK STATE HOUSING FINANCE AGENCY AND HON. LEE GOODWIN, AS COMMISSIONER, NEW YORK STATE DIVISION OF HOUSING AND COMMUNITY RENEWAL, S. WILLIAM GREEN AS REGIONAL ADMINISTRATOR, U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT AND HON. JAMES T. LYNN AS SECRETARY, U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT.

AFFIDAVIT

Defendants.

AFFIDAVIT OF JAMES VELLA IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION

STATE OF NEW YORK
COUNTY OF NEW YORK ss:

JAMES VELLA, being duly sworn, deposes and says:

1. This affidavit is submitted at the request of the BAY RIDGE ACTION COMMITTEE, INC., et al, in connection with their action for an injunction against construction by the defendants captioned above of a proposed twin-tower, two-building high rise apartment project (Shore Hill Apartments) in the Bay Ridge section of Brooklyn, New York City. The affidavit is directed to certain environmental pollution aspects of the Shore Hill Apartments and as noted below, sets forth conclusions reached by your deponent based upon his professional expertise in fields having a relationship to the environmental impact of a high density, high-rise apartment complex such as SHORE HILL.

2. I am a member of the firm of SAVIGNANO, STRANGE, and VELLA, engaged in the practice of general architecture, rendering professional architectural services, including consultations, as well as design, research, feasibility and other similar professional studies. As a member of the firm, I have been engaged in the design and construction of many private and community projects, including public schools and community recreational facilities.

AFFIDAVIT OF JAMES VELLA IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION

3. I have been licensed as an architect under the laws of the State of New York since 1967. I received my professional education at St. Francis College and the Institute and Design and Construction. I am a member of the American Institute of Architects and the New York State Society of Architects.

4. I have reviewed the specifications, plans and drawings for the proposed Shore Hill Apartments. In my judgment, as designed, this proposed construction, can be expected to give rise to many environmental problems for the community in general and the population of the Buildings of SHORE HILL.

Specifically, the lack of sprinkler systems, smoke alert systems and related devices communicating smoke and fire warnings through the elevator systems, poses a genuine threat to the lives of the tenants and the surrounding home owners. In addition, from my knowledge of the inadequate line capacities, obselescence and age of the various sewage, sanitation, electric power and telephone systems of the immediate area and the community in general and the inadquate garage space designed for the project and the general lack of off street parking, air, light, noise and water pollution can be expected to result. For example, the most casual rain showers now produce flooding in the area, sewage backups; the already congested

AFFIDAVIT OF JAMES VELLA IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION

traffic and parking problems of the narrow residential side streets will be made intolerable by the additional vehicular traffic from the cars of 1,000 tenants, visitors, delivery trucks and other service vehicles. In addition to the water, air and noise pollution, light will be reduced from the shadow line projected from the two buildings rising over 200 feet above the single family homes surrounding it on all sides.

On the basis of the foregoing, it is clear to me that serious environmental problems exist, which a properly and thoroughly mounted environmental impact study would have disclosed. The significant environmental effects here are more than potential; they are inevitable.

[illegible] County }ss.,
New York State

JAMES VELLA

Sworn to before me this 15 day of

May, 1975.

[illegible]

HERBERT GELLER
Notary Public State of New York
No. 1398550
Qualified in [illegible] County
Commission Expires March 30, 19[illegible]

AFFIDAVIT OF GEORGE NICOLAIDES IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----------x

BAY RIDGE ACTION COMMITTEE, INC., et al.,

Plaintiffs,

-against-

THOMAS EKELAND, et al.,

Defendants.

75 Civ. 477
(Judge Bartels

AFFIDAVIT

----------x

STATE OF NEW YORK)
) SS.:
COUNTY OF KINGS)

GEORGE NICOLAIDES, being duly sworn, deposes and says:

1. I am a real estate broker licensed by the State of New York. I maintain offices at 8103 5th Avenue, Brooklyn, New York in Bay Ridge, Brooklyn, New York City. I am a member of the real estate firm of OLYMPIC REALTY, INC. and serve as the President thereof.

2. This Affidavit is submitted out of concern for the preservation of the community of Bay Ridge and the threat to the public well being of the community posed

AFFIDAVIT OF GEORGE NICOLAIDES IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION

by the construction of an ill-conceived housing project unsuited to the community of one family homes in the midst of which the proposed housing project is being built and representing an equal threat by reason of the downgrading of the environment of the area which will be caused by certain or predictable pollution to the air, light, water, sanitation and sewage resources of the neighborhood. This Affidavit is therefore made in opposition to the construction of the Shore Hill Apartments as presently designed and as noted below, sets forth the conclusions reached by your deponent based upon my professional expertise in the real estate business and other fields having a relationship to the environmental impact of a high density high-rise apartment complex set down in the midst of a community of one family homes.

3. My qualifications are as follows:

I am a licensed real estate broker of the State of New York. I have been a licensed real estate broker for over 12 years and have during that time worked

AFFIDAVIT OF GEORGE NICOLAIDES IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION

with many experienced real estate brokers and firms. For the past 3 years I have been the President and owner of my own real estate firm.

4. I am familiar with the plan for building the Shore Hill Apartments and with its size and scope consisting of 2 buildings rising over 200 feet in height and containing 558 apartment units design to house over 1000 people. I have taken note of the fact that this project is designed for location in the midst of single family residences. I have also taken note that the height and width of the project will cause a serious shadow line to be thrown across the one-family homes surrounding this project.

5. A review of the plans shows parking capacity for a little more than 100 vehicles. The traffic congestion and exasperated parking problem that will result from the vehicles to be owned by the estimated 1000 or more tenant population in addition to the vehicles of visitors and the traffic brought on by delivery vans and other service vehicles, leads me to conclude that the pollution attendant upon this

phenomena will be severe and that combined with other related air pollution from the noxious fumes and noise pollution will taken together have a serious degrading effect not only in the particular pollutant area but in their overall impact on the aesthetics surrounding the community which will amount to a degradation of the environment.

6. Based upon the foregoing, in my judgment as a professional realtor familiar with realty values of the area, an adverse economic impact must be expected from the construction of the Shore Hill Apartments as designed with a resultant decline in the value of real estate to the damage of the particular home owners and other owners of real estate in the area and to the general disadvantage of the revenue gathering power of the City of New York. It is my estimate that the 1000 most proximate homes to the projected construction could reasonably expect to suffer a decline of $10,000,000

AFFIDAVIT OF GEORGE NICOLAIDES IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION

to $15,000,000 in the market value of their properties if the construction of the Shore Hill Apartments be permitted to continue as presently designed.

_____

GEORGE NICOLAIDES

Sworn to before me this

day of May, 1975.

_____

Notary Public

DEFENDANT GOODWIN'S AFFIDAVIT IN OPPOSITION TO MOTION.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----------X

BAY RIDGE ACTION COMMITTEE, INC., et al.

Plaintiffs,

-against-

THOMAS EKELAND, et al.,

Defendants.

AFFIDAVIT IN OPPOSITION TO APPLICATION FOR A PRELIMINARY INJUNCTION

75 Civ. 477
Judge Bramwell

----------X

STATE OF NEW YORK)
: SS.:
COUNTY OF NEW YORK)

LEE GOODWIN, being duly sworn, deposes and says:

1. I am Commissioner of the Division of Housing and Community Renewal of the State of New York (hereafter referred to as the Division). I am a defendant herein.

2. I urge this Court not to grant the preliminary injunction asked for by the plaintiffs. Every consideration of social and public policy, every equity, militates against the granting of such an injunction.

DEFENDANT GOODWIN'S AFFIDAVIT IN OPPOSITION TO MOTION A.

BACKGROUND:

3. This project to house older persons has been planned since 1970. Protracted hearings were held before the City Planning Commission. Not only was the approval of the City officials necessary; it was necessary to obtain Federal approvals both for a subsidy under Section 236 of the Housing Act of 1963 and a Federal statement that the project would have no adverse environmental impact. Objections to the original proposal for a 22 story high rise apartment were met by changing the project to two 14 story buildings. The number of dwelling units was reduced from 664 units to 557.

The buildings occupy only about 25% of the site which is over 2 acres in area.

The Division regards the proposed project as eminently desirable since it is sponsored by Lutheran Medical Center, a moderate size, non-proprietary hospital.

All the necessary State, Federal and Municipal approvals were finally obtained. In December 1974, the New York State Housing Finance Agency, with my approval, made a commitment to lend, on mortgage, a total of $22,550,000 for the construction of the project.

Actual construction started about January 5, 1975.

DEFENDANT GOODWIN'S AFFIDAVIT IN OPPOSITION TO MOTION

B.

THE DELAY IN SEEKING THIS INJUNCTION:

4. The fact that construction had started about January 5, 1975, is scarcely a fact which could have been unknown or concealed from the plaintiffs. Yet, they did not begin this lawsuit for three months thereafter -- not until April 2, 1975.

5. They did not ask for a preliminary injunction in April 1975 when they commenced this action, but waited until May 22, 1975, nearly five months after construction had started.

6. Meanwhile, the buildings' foundations have been completed and construction of the first and second floors is underway.

7. The delay in seeking a preliminary injunction is indicative of the lack of immediate and irreparable damage to the plaintiffs which would warrant the injunction. The buildings already exist in part.

C.

THE DAMAGES TO THE DEFENDANTS IF THE INJUNCTION IS GRANTED ARE SUBSTANTIAL:

8. The New York State Housing Finance Agency, as of May 9, 1975, had disbursed on its mortgage commitment a total

of $3,665,000. The Agency disburses on monthly requisitions. A requisition for the construction work done in May 1975, will undoubtedly be submitted on or about June 1, 1975 and be paid on or about June 10, 1975. I estimate that this will bring the Agency's total payment as of the last mentioned date to about $4,000,000. Interest on this sum at the present prime rate of 7 1/2% is $300,000 a year or $25,000 a month.

9. Stopping the construction of the project will give rise to damage claims by the contractors who have contracts to build the buildings. The amount of such damage is not ascertainable but, since the construction is estimated to cost over $16,000,000, will be substantial.

Another effect of the stopping of construction is that it will throw out of work the mechanics and workingmen engaged in the construction at a time when the building industry is at one of its lowest levels of employment in the City's history. It will deprive these people of their livelihood. A description of the impact of the stopping of construction, of the outstanding commitments for materials which have been made by the general contractor and subcontractors, of the layoffs of men, and of the expenses involved are contained in the affidavit (Exhibit "A" hereto) of Mr. Reuben Glick, President of Glick Construction Corp., the general contractor for the project.

DEFENDANT GOODWIN'S AFFIDAVIT IN OPPOSITION TO MOTION

10. If the injunction be granted and the plaintiffs' case be ultimately dismissed, the added interest and damage costs will be funded into the mortgage commitment, raise the carrying charges on the buildings and result in increased rentals to be paid by the ultimate intended beneficiaries, the middle and lower income elderly. These persons are not parties to this action; they are not yet even tenants, but in my capacity of Chief Administrator of the State's Private Housing Finance Law I call to the Court's attention that it is these persons who will ultimately be called upon to pay the costs arising from the delay if an injunction is granted.

The need for this type of housing is evidenced by the fact that the sponsor advises me that over 8,000 applications for the 557 apartments have been received.

D.

THERE IS LITTLE PROBABILITY THE PLAINTIFFS WILL SUCCEED:

11. My attorneys advise me that a temporary injunction should not be issued where there is little probability the plaintiffs will succeed on the merits.

12. I would not have approved this project without having received evidence of approval by the Federal and City agencies. I am required to have obtained the City's approval under Section 26(5) of the Private Housing Finance Law. The

Federal subsidy under the Housing Act of 1968 could not have been granted unless the Department of Housing and Development had received Environmental Clearance since all agencies of the Federal Government are bound by the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. § 4321 et seq. In fact, HUD had received such environmental clearance. I am informed that evidence of such clearance is to be submitted to the Court by the United States Attorney as part of the Federal defendants' opposition to the granting of the preliminary injunction.

13. There is little probability the plaintiffs will succeed in showing that the value the Division placed on the land was due to fraud or overreaching. The site was unique in many respects. The value placed on it was based on several appraisals, one of which was by the Division's own appraiser, and was further based upon extensive negotiations conducted between the Project Approval Committee of the Division and representatives of the sponsors. The facts as to this are set forth in the following history.

14. Lutheran Medical Center had acquired the land in 1967 for about $1,600,000 of which $1,000,000 was represented by a mortgage held by the Prudential Insurance Company.

DEFENDANT GOODWIN'S AFFIDAVIT IN OPPOSITION TO MOTION

The property consists of 2.698 acres, has frontage on three streets, has excellent views of the harbor, and is unique in that it is not only of tremendous size for this area but required no relocation of tenants or demolition of existing structures. It was ready for immediate development.

At the time it purchased the property, the Medical Center paid the purchase price based on an appraisal dated May 22, 1967, made by James F. Boyle, a highly qualified appraiser.

The Medical Center planned at first to use the land for additional hospital purposes, but it soon thereafter received, free of charge from the City, the old American Machine and Foundary building which it decided to convert into a new hospital rather than build on this site.

In 1970, the Medical Center placed the property on the market for an asking price of $2,000,000. It withdrew its placement when it developed the idea of aiding the Community by erecting senior citizen housing thereon and when the proposed project was received with enthusiam by the Division.

15. Under date of March 18, 1970, at the time the application for senior citizens housing was submitted to the Division, the Medical Center had the property appraised at $2,180,000 by Mr. Frederick S. Haddad, who was an Assistant Mortgage Officer of the Anchor Savings Bank. Mr. Haddad considered the highest and best use of the land to be for a residential development and projected a high rise (14 story) elevator apartment house.

DEFENDANT GOODWIN'S AFFIDAVIT IN OPPOSITION TO MOTION

Under date of January 15, 1971, Mr. Haddad computed the actual cost to the Medical Center since its acquisition of the site in 1967 at $1,828,292. He found its present cost including 6% interest, to be $1,989,576. If interest were computed at 7 1/2%, the Medical Center's cost, he estimated, would have been $2,034,986.

These cost figures do not include real estate taxes which would have been payable if the property had been owned by private interests.

16. Under date of December 28, 1970, the Chief Real Estate Appraiser of the Division, Mr. Jules D. Goldsmith, a highly qualified appraiser and an attorney, appraised the land as having an estimated value of $1,675,000 to $1,750,000. Lutheran Medical Center indicated it was not content with the Division appraiser's value conclusion and cited appraiser Haddad's value of $2,180,000.

17. There is a Project Approval Committee (PAC) in the Division which acts on all applications submitted in the Division's programs. The Committee consists of the Deputy Commissioner, Design & Construction (Chairman), the Executive Director of the Housing Finance Agency (HFA), the Counsel for the Division, the Assistant Commissioner for Planning & Construction, the Assistant Commissioner for Field Services and the

Assistant Commissioner, Urban Affairs. These 6 people have a great deal of experience and expertise in real estate matters and site selection.

On January 11, 1971, the Committee met and reviewed the Sponsor's application. It was agreed that the subject site was satisfactory and very desirable for development as a senior citizen housing project, the only question being the acquisition cost, due to the difference between the value set by the Division's appraiser and the value sought by the Sponsor. The Committee delegated Assistant Commissioner Hecht to meet with the Sponsor to see if the difference in land value could be resolved. The difference of $430,000 was finally resolved by the [redacted] Sponsor reducing its asking price by $255,000 and the Division increasing its figure by $175,000 (10% above the Division appraiser's value estimate).

18. On March 27, 1971, Deputy Commissioner Gaynor wrote the sponsor that the value of the site had been approved at $1,925,000.

19. I am not aware of any facts that were concealed from the Division respecting the value of the land. I do not consider the value set by the Division's Project Approval Committee as a result of the negotiation with the Sponsor as inflated.

No individual benefitted thereby. The ultimate amount of the mortgage commitment made by the State Housing Finance Agency was increased. However, since the Agency's ultimate mortgage commitment of $22,550,000 was to cover 96.99% of the entire project cost the equity funds required to be supplied by the sponsor were increased somewhat too. The original mortgage request was for $20,030,000; the equity contribution then was to be $640,864. This was increased to $700,926 when the mortgage commitment was increased to $22,550,000.

Most of the increase in the cost of the project lay in a change made to accommodate the objections of the community. The original project was for one 22-story building. The final project was for two 14-story buildings. The original project contemplated 664 dwelling units; the final project reduced this to 557 dwelling units.

20. Once a site and an application for a proposed projection are approved, the sponsor's carrying charges become a legitimate item of cost. In this case, there were no real estate taxes to be paid but there was interest of about $5,000 a month due Prudential Insurance Company. This became a legitimate added project cost. The ensuing delay, due in most part to the proceedings before the Planning Commission and Board of Estimate whose approval of the project was required, and the community whose approval is always desirable, caused this amount to accumulate.

DEFENDANT GOODWIN'S AFFIDAVIT IN OPPOSITION TO MOTION

21. The independent appraisals made for the Lutheran Medical Center by Frederick S. Haddad were submitted to the Division; and as far as I know, no attempt was made to conceal any material matter from us. Negotiations to reach a mutually satisfactory agreement on the value of the land were conducted. The Division considered its appraiser's value conclusion as fair and reasonable; however, we also know that equally qualified appraisers may often differ as to value. Compromises between a "buyer" and "seller" are often resorted to, especially when the asking and offering prices are both based on appraisals and we took into consideration the fact that "appraising is not an exact science".

Further, the Project Approval Committee, in approving the compromise offer with the Sponsor, was well aware of the savings to the project in not having any tenant relocation expenses and/or demolition costs.

22. It is alleged in paragraph 30 of the complaint, that I was wrongfully induced to approve the project by misrepresentation that the income would be sufficient to meet the project's expenses.

23. I find it difficult to see how this would be done or for what benefit.

24. On the expense side of the matter, the largest single item of expense would be the fixed and definite payments to be made on account of interest, principal and service fees on the New York State Housing Finance Agency mortgage. The next largest item, operating expenses, salaries, fuel oil, repairs etc., were inherently matters of projection and estimate. While the figures submitted to the Division in 1970 to 1974 changed to reflect the impact of inflation, this was scarcely the result of misrepresentation. By December, 1974, when the final mortgage commitment was made, the impact of inflation was recognized. It was here and present.

Thus, in June 1972, the sponsors showed a projected total annual expense of $1,811,842. At this time the average room rental including utilities was computed at $73.09 a room per month. There were 2139 rental rooms; the total rent roll per year would be $1,811,904.12.

By December 1974, when the project had been changed to two 14-story buildings and to 558 apartments containing 1790 rental rooms, the average room rental had increased to $108.59 per month including utilities.

In December 1974, a tenant renting a three room apartment would have to pay a monthly rental of $325.74; a 3 1/2 room apartment would cost $380.03.

DEFENDANT GOODWIN'S AFFIDAVIT IN OPPOSITION TO MOTION

By virtue of the Federal subsidy available under Section 236 of the Housing Act of 1968, these monthly rentals would be reduced to $159.21 and $135.74, respectively.

These rent levels are not impractical. I am informed that although the project is just about at the first floor level (construction stated on January 15, 1975), the sponsor has received nearly 8,000 applications for apartments, mostly from residents of the neighborhood.

25. In the event the rent level is not sufficient to met its expenses, the sponsor may apply for an increase. Even if it does not, I, on my own motion, may order such an increase under Section 31 of the Private Housing Finance Law.

26. In short, I find it difficult to see the income or expenses could have been misrepresented nor to whose benefit such misrepresentation would enure. The expenses of the construction, architect's fees, lawyer's fees were all subject to the Division's scrutiny and approval. The Division has a large and experienced staff who, having examined such matters in hundreds of projects, are aware of costs, contingencies and reasonable prices.

DEFENDANT GOODWIN'S AFFIDAVIT IN OPPOSITION TO MOTION

27. I submit that the probability of success on the merits does not justify the granting of a preliminary injunction: the damage to the State and to the intention of the Federal, State and City programs to house older persons will be enormous; the plaintiffs have delayed making the application for an unconscionable time and do not merit the exercise of discretion in their favor.

WHEREFORE, I ask that the application for a temporary injunction be denied.

Lee Goodwin
LEE GOODWIN

Sworn to before me this
5th day of June, 1975.

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ORDER DATED JUNE 4, 1975 EXTENDING TIME TO SERVE PAPERS IN OPPOSITION TO MOTION FOR PRELIMINARY INJUNCTION.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- -x

BAY RIDGE ACTION COMMITTEE, INC., :

Plaintiffs, :

-against- :

THOMAS EKELAND, et al., :

Defendants. :

- -x

75 Civ. 477
(Judge Bramwell)

ORDER

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D. N.Y.
★
JUN 5 1975
TIME A.M. .....
P.M. .....

Defendants Thomas Ekeland, George Adams, Howard Smith, Shore Hill Housing Development Fund Company, Inc., Shore Hill Housing Company, Inc., Lu-Ekel Housing, Inc. and Luthern Medical Center (the "Shore Hill Defendants") having moved for an order extending the time for the Shore Hill Defendants to serve papers in opposition to the plaintiffs' motion for a preliminary injunction and for an order directing plaintiffs to answer Interrogatories No. 6-46, inclusive, of the First Set of Interrogatories (relating to standing to sue) propounded by the Shore Hill Defendants, dated May 12, 1975; and argument on the motions having been heard by this Court on May 30, 1975; it is

ORDERED, that the time for the Shore Hill Defendants to serve papers in opposition to the plaintiffs' motion for a preliminary injunction shall be extended to and including June 13, 1975 (by hand); and it is

FURTHER ORDERED, that plaintiffs answer Interrogatories No. 6-46, inclusive, of the First Set of Interrogatories (relating to standing to sue) propounded by the Shore Hill Defendants, dated May 12, 1975, by service of answers on each of the defendants in this action by June 9, 1975 (if by mail) or by June 12, 1975 (if by hand).

Eugene Nickerson
U.S.D.J.

Dated: Brooklyn, New York
June 4, 1975

EXHIBIT A

15

AFFIDAVIT OF CARL E. PERSON IN OPPOSITION TO MOTION.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- -x

BAY RIDGE ACTION COMMITTEE, INC., et al., : 75 Civ. 477
(Judge Bramwell)

Plaintiffs, :

-against- : AFFIDAVIT IN OPPOSITION

THOMAS EKELAND, et al., :

Defendants. :

- -x

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

CARL E. PERSON, being duly sworn, deposes and says:

1. I am of counsel to Joseph M. Sussillo, attorney for the Shore Hill Defendants in the action, am fully familiar with all facts and prior proceedings had in this action, and make this affidavit in opposition to plaintiffs' motion for a preliminary injunction.

2. By order of Hon. Henry Bramwell, dated June 4, 1975 and filed June 5, 1975 (a copy of which is annexed hereto as Exhibit A), plaintiffs were ordered by this Court to answer interrogatories 6-46 (relating to the issue of plaintiffs' standing to commence this action) of the FIRST SET OF INTERROGATORIES (FRAUD AND STANDING) WITH REQUEST TO PRODUCE RELATED DOCUMENTS, dated May 12, 1975, which answers were to be served by mail no later than June 9, 1975 or by hand no later than June 12, 1975. Plaintiffs served no such answers.

3. The answers to interrogatories 6-46 are vital to defendants' assertion that plaintiffs that plaintiffs have no standing to bring this action and, therefore, lack standing to obtain the requested preliminary injunction. Because plaintiffs have wilfully failed to answer the interrogatories in time

AFFIDAVIT OF CARL E. PERSON IN OPPOSITION TO MOTION

for defendants to use the answers in opposition to plaintiffs' preliminary injunction motion, the Shore Hill Defendants and the other defendants asserting that plaintiffs have no standing to sue have been severely prejudiced, unless plaintiffs' motion be denied, or at least continued until defendants have been able to obtain full discovery as to the issue of standing to sue.

4. Furthermore, it does not appear from the complaint that plaintiffs have suffered any injuries sufficient to give plaintiffs standing to sue as "aggrieved" persons. Plaintiffs allegations are non-specific, conclusory allegations which fail to allege sufficient details of injury to permit plaintiffs to maintain this action.

5. Although plaintiffs allege fraud, there is no evidence that any person has been defrauded. Differences as to land value known to the participants affords no basis whatever for plaintiffs' conclusions that there was fraud.

6. Plaintiffs' attorney, Patrick J. Murphy, has been trying to stop this Shore Hill Project for a good many years. Affiant David Haynes saw Mr. Murphy and his wife at various Board of Estimate meetings about this Project during 1973-4 (¶ 5, Haynes Aff't). Plaintiffs' present motion for a preliminary injunction, made 7 weeks after commencement of the action and many months after construction of the building located a block or so away from Mr. Murphy's residence, is totally inexcusable; the motion should be denied for many reasons including the doctrine of laches. Already the 2nd floor of the 14-story building is under construction.

7. Perhaps Mr. Murphy during the recent argument on plaintiffs' motion, gave to this Court the most compelling reason for denial of the motion: Mr. Murphy stated that his plaintiffs were unable to post security to cover the costs and damages anticipated by defendants in the event of grant of the

requested preliminary injunction. Accordingly, plaintiffs are requesting relief which they know they are not entitled to have under law, which may well explain why plaintiffs have wilfully failed to answer interrogatories 6-46 of the Shore Hill Defendants even though the Court ordered them to answer such interrogatories.

8. In light of plaintiffs' activities to date in this action, it seems that this Court should deny plaintiffs' motion without further consideration, and let this action proceed to a determination of the issues raised by plaintiffs.

Carl E. Person

Subscribed and sworn to before me
this 13th day of June, 1975.

Notary Public

IRA J. EHRLICH
NOTARY PUBLIC, State of New York
No. 31-4600212
Qualified in New York County
Commission Expires March 30, 1976

AFFIDAVIT OF DAVID S. HAYNES IN OPPOSITION TO MOTION FOR PRELIMINARY INJUNCTION.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- -x

BAY RIDGE ACTION COMMITTEE, INC., et al., : 75 Civ. 477
(Judge Bramwell)

Plaintiffs, :

-against- : AFFIDAVIT IN OPPOSITION

THOMAS EKELAND, et al., :

Defendants. :

- -x

STATE OF NEW YORK)
: ss.:
COUNTY OF KINGS)

DAVID S. HAYNES, being duly sworn, deposes and says:

1. I am the Assistant Director of Community Relations for defendant Lutheran Medical Center (having held such position from April 20, 1973 to the present), am fully familiar with all the facts stated herein, and make this affidavit on behalf of defendants Thomas Ekeland, George Adams, Howard Smith, Lutheran Medical Center, Inc., Lu-Med Housing Company, Inc., Shore Hill Development Fund Co., Inc. and Shore Hill Housing Company, Inc. (hereinafter referred to as the "Shore Hill Defendants") IN OPPOSITION TO the motion by plaintiffs for a preliminary injunction.

2. At Lutheran Medical Center I specialize in gerontology (which deals with the problems of the aging and aged) and a substantial part of my activities have been in connection with the Shore Hill Project, the continued construction of which plaintiffs seek to preliminarily and permanently enjoin.

3. From April 25, 1975 to the present, Lutheran Medical Center received approximately 3,000 letters of interest from senior citizens indicating a desire to reside in the Shore Hill Apartments. Approximately 90%

of these letters came from persons now residing in the radius of 2-1/2 miles from the Shore Hill Project; and approximately 99+% of these 3,000 letters were postmarked in Brooklyn.

4. The Shore Hill Project will include 558 separate residential units designed for a maximum of 800 senior citizens (age 62 and over).

5. Prior to my employment with Lutheran Medical Center, I was employed as the Director of Community Relations for the Bethlehem Lutheran Church, located at 4th Avenue and Ovington Avenue, Brooklyn, New York (from December 28, 1972 through April 19, 1974). As part of my employment by Bethlehem Lutheran Church and, subsequently, by Lutheran Medical Center, I attended three Board of Estimate meetings at which the environmental impact of the Shore Hill Project was discussed as well as other matters. These meetings occurred during 1973-1974, and I recall seeing Patrick J. Murphy and/or his wife, Kathleen Murphy, at each of these meetings.

6. If construction of the Shore Hill Project is enjoined preliminarily, the economic costs to Lutheran Medical Center, Inc., Lu-Med Housing Company, Inc., Shore Hill Development Fund Co., Inc. and Shore Hill Housing Company, Inc. (the "Corporate Shore Hill Defendants") would be substantial, for which plaintiffs should be required to post an undertaking or bond. Lutheran Medical Center, Inc., prior owner of the property on which the construction is taking place, and the present owner of the property, Shore Hill Housing Company, Inc., would lose the use of the land during the period of enjoined construction, amounting to no less than $200,000 per year (based on the value of such loss of use); also, the various Corporate Shore Hill Defendants would have to pay a substantial amount to secure the property from vandalism and possible injury to children and others, amounting to $50-100,000 (non-recurrent) for fencing and a security alarm system and $40-50,000 per year for maintaining the Project with personnel of the Corporate Shore Hill

Defendants; also, there would be added costs for the Corporate Shore Hill Defendants to keep local sewers free of dirt and debris (costs now being picked up by Glick Construction as well as New York City), for an annual cost of $15,000 approximately; the Corporate Shore Hill Defendants would have a continuing cost to supervise the Project, to mitigate damages, involving the salary of a part-time secretary and affiant (as Project Coordinator), amounting to about $20,000 per year; plus overhead expenses relating to office space and equipment, amounting to about $10,000 per year; also, there would be a cost of insurance during the period to cover liability and property damage (including the $4,000,000 in construction costs expended to date, approximately); assuming temporary loss of real estate tax abatement, there would be an additional loss to the Corporate Shore Hill Defendants, approximately 4% on $2-6,000,000, or at least the possibility of litigation with respect to such liability, if any. The total amount of such liability is $50-100,000 of non-recurrent costs and an annual cost ranging from $375,000 to $545,000 (including insurance at an estimated $10,000 per year).

7. A very large group of senior citizens in the area surrounding the Shore Hill Project are very anxious to have the Project proceed as planned, without interruption, and any injunction would be most unfortunate for these people. The Shore Hill Project is not for housing alone, but is designed to assist its residents in the numerous other important areas of human ecology, including medical, economic, legal, sociological, psychological, cultural and education, for the betterment of the entire communtiy.

David S. Haynes

Subscribed and sworn to before
me this 12th day of June, 1975.

Notary Public

CATHERINE GORMAN
Notary Public, State of New York
No. 24-6002150
Qualified in Kings County
Commission Expires March 30, 19..7(

AFFIDAVIT OF WILLIAM J. GRAVES IN OPPOSITION TO MOTION.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- -x

BAY RIDGE ACTION COMMITTEE, INC., et al., : 75 Civ. 477
(Judge Bramwell)
Plaintiffs, :
AFFIDAVIT IN OPPOSITION
-against- :

THOMAS EKELAND, et al., :

Defendants. :

- -x

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

WILLIAM J. GRAVES, being duly sworn, deposes and says:

1. I am the President of Bay Ridge Association of Senior Citizens, Inc. ("BRASC"), a New York Not-for-Profit corporation which was organized in March, 1973, am fully familiar with all the facts hereinafter stated, and make this affidavit in opposition to the motion by plaintiffs for a preliminary injunction.

2. BRASC is a multi-service advocacy organization for senior citizens (1,975 dues-paying members), most of whom reside in the Bay Ridge area. BRASC operates out of headquarters donated by Bethlehem Lutheran Church. The organization has recently received a grant of $10,641 from the New York City Office for the Aging (partly financed by federal Title III funds, Older Americans Act).

AFFIDAVIT OF WILLIAM J. GRAVES IN OPPOSITION TO MOTION

3. Our organization was designed to support programs for older residents of Bay Ridge and surrounding area, including housing, legal and financial counseling, assistance with Medicaid and Medicare and other advocacy services.

4. The housing conditions and housing costs for the elderly in Bay Ridge are appalling. Bay Ridge senior citizens frequently find that apartment houses are allowed to deteriorate by their landlords and too often they are under intense pressure from their landlords to vacate the apartments in order that the landlord may decontrol the apartments; and often other housing units are too expensive or too spacious and unmanageable for senior citizens. In the latter instance this in turn prevents larger families from using these apartments or other dwelling units.

5. The advantages of the Shore Hill Project for senior citizens are that it will provide manageable housing accomodations for the elderly in the context of a safe, comfortable and well-serviced living environment, with special facilities such as health and social services, educational programs, arts and hobby areas, a library, and a tenant-operated general store, together with both outdoor and indoor recreational facilities. Presently, most senior citizens withdraw into their apartments out of fear by the late afternoon, and the Shore Hill Apartment would extend their social life and activity to a considerable degree.

6. If the preliminary injunction sought by plaintiffs were granted, the resulting delay in construction of the Shore Hill Project could only have the effect of increasing the unit cost, which would have the effect of eliminating many senior citizens from the Shore Hill Apartment.

AFFIDAVIT OF WILLIAM J. GRAVES IN OPPOSITION TO MOTION

7. It should be emphasized that the Shore Hill Project has been designed to meet the needs of senior citizens in the Bay Ridge area. Statistically, the Bay Ridge area represents one of the highest concentrations of older people anywhere in the country, with fully 20% of the community being over 65 years of ag It is for this reason that the plaintiffs' motion for a preliminary injunction must be in all respects denied.

William Graves

William J. Graves

Subscribed and sworn to before me
this 5th day of June, 1975.

Carl Pearson

Notary Public

CARL E. PEARSON
Notary Public, State of New York
No. 41-3058710
Qualified in Kings County
Commission Expires March 30, 1977

FIRST SET OF INTERROGATORIES WITH REQUEST TO PRODUCE DOCUMENTS.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

BAY RIDGE ACTION COMMITTEE, INC., et al.,	:	75 Civ. 597 (JRB)
Plaintiffs,	:	FIRST SET OF INTERROGATORIES (FRAUD AND STANDING) WITH REQUEST TO PRODUCE RELATED DOCUMENTS
-against-	:	
THOMAS EIELAND, et al.,	:	
Defendants.	:	

TO: Patrick J. Murray, Esq.
Attorney for Plaintiffs
425 Park Avenue
New York, N.Y. 10022

Pursuant to Rule 33 of the Federal Rules of Civil Procedure, each of the plaintiffs is required to serve upon the undersigned, within 30 days from the date of service hereof, sworn answers to each of the interrogatories hereinafter set forth.

These interrogatories are continuing interrogatories. If at any time after service of your answers hereto, and prior to the trial of this action, you obtain additional information responsive to any of these interrogatories, you shall, within 30 days, and in no event later than 5 days before trial, serve supplemental sworn answers setting forth such additional information.

Time Period

These interrogatories are to be answered for the period commencing January 1, 1967 and ending at the date of the respective answers to these interrogatories, unless stated to the contrary in a specific interrogatory.

FIRST SET OF INTERROGATORIES WITH REQUEST TO PRODUCE DOCUMENTS

Definitions

As used herein, the term:

1. "Document" includes the original and any copy (regardless of origin) and all drafts of cover letters, correspondence, memoranda, reports, notes, letters, affidavits, telegrams, calendars, messages (including reports, notes and memoranda of telephone conversations, conferences and meetings), studies (including studies or analyses concerning land use or values or environmental impact), proposed legislation, rules, proposed rules, regulations, proposed regulations, appraisals, analyses, comparisons, books, magazines, clippings, newspapers, booklets, circulars, bulletins, applications, questionnaires, written criticisms or complaints, notices, instructions, procedure manuals or releases, press releases, minutes and other communications, inter- and intra-departmental communications, charts, graphs, photographs, phonographs or other audio or visual recordings and other data compilations from which information can be obtained (translated, if necessary by the plaintiff answering these interrogatories through detection devices into usable form).

2. "Identify" or "state the identification of" means:

(a) when used with reference to a natural person, state his or her full name and present or last-known business and residence address;

(b) when used with reference to any entity other than a natural person, state:

(i) its full name;

(ii) the address of its principal place of business;

(iii) if it is a corporation (other than a non-profit corporation), the jurisdiction under the laws of which it has been organized and the date of such organization;

(iv) in the case of governmental agencies or non-profit corporations, the identity of the principal officer or official; and

(v) in the case of any other entity, the identity of its principals;

** (c) when used with reference to a document, writing or written communication, state:

(i) the nature of the document (e.g., letter, questionnaire, written complaint, application, contract, memorandum, note of telephone conversation);

(ii) its date;

(iii) the identification of its author, each addressee and each recipient of a copy;

(iv) its substance; and

(v) its present location or custodian; and

(d) when used with reference to an oral communication:

(i) state the date on which it occurred;

(ii) identify each person who was present when it was made;

(iii) state its substance; and

** (iv) identify each document which refers thereto. In lieu of stating the substance of any document or writing, a copy thereof may be annexed to the answers to these interrogatories.

3. "Person" shall include natural persons, corporations, non-profit corporations, trusts, partnerships, associations, public corporations, municipal corporations, state governments, local governments and other governmental agencies or bodies.

** Documents need not be identified or copies annexed if they are to be produced to defendants in accordance with Request to Produce Related Documents (p. 14).

4. "You" or "your" shall mean the plaintiff separately answering these interrogatories, any predecessors or successors in interest, and the present and former governors, directors, officers, members, employees, agents, investigators, attorneys and all other persons acting or purporting to act on behalf of the plaintiff or any predecessors or successors in interest.

5. "Complaints" shall mean:

(a) any oral or written complaints, criticisms or requests by a person for a hearing, investigation, imposition of fines, penalties or other sanctions, official action or commencement of legal or administrative proceedings; and

(b) any legal or administrative proceedings actually commenced.

Interrogatories

** I. Fraud charges by plaintiffs

1. Identify and describe separately and in detail each act of each defendant or other person claimed by plaintiffs to be fraudulent, and as to each such act:

(a) state when and where the act occurred;

(b) identify each person who was defrauded; and

(c) describe the extent of any damages suffered by such person.

2. Identify each person who plaintiffs claim participated in any of the acts described in answer to Interrogatory No. 1 above, and describe separately and in detail the extent to which plaintiffs claim each person participated in any of the acts so described.

** Headings are for convenience only and are not to be read into or considered a part of any of the interrogatories.

FIRST SET OF INTERROGATORIES WITH REQUEST TO PRODUCE DOCUMENTS

3. Identify each person (including, if applicable, any of the persons identified in answer to Interrogatory No. 2 above) who plaintiffs believe may have witnessed or may have information relating to performance of any of the acts described in answer to Interrogatory No. 1 above; and, as to each such person, identify which acts he may have witnessed and describe briefly what information relating to each act he may have.

4. Identify each person you or any other person complained to or otherwise communicated with about any of the acts described in answer to Interrogatory No. 1 above, and describe each such complaint and/or other communication by:

(a) identifying each person who was a participant in or witness to the making of any such complaint or communication;

(b) stating the time, date and place of each meeting at which any such complaints or communications took place and identifying each of the persons in attendance at the meeting;

(c) identifying the person or persons under whose auspices the meeting was held; and

(d) identifying the lessee or owner in possession or renter of the premises used for each of the meetings.

5. Identify each document evidencing or relating to any of the:

(a) acts described in answer to Interrogatory No. 1 above;

(b) witnesses or information identified in answer to Interrogatory No. 3 above; and

(c) complaints or communications described in answer to Interrogatory No. 4 above.

FIRST SET OF INTERROGATORIES WITH REQUEST TO PRODUCE DOCUMENTS

II. Standing of plaintiffs to sue

TO BE ANSWERED BY INDIVIDUAL PLAINTIFFS ONLY:

6. Describe in detail each injury you claim you have suffered or may suffer as a result of the (a) construction and (b) continued construction of the Project (as defined in ¶ 8 of your complaint).

7. As to each injury described in answer to the preceding interrogatory,

(a) state each of the grounds on which you claim you have suffered or would suffer such injury; and

(b) identify and describe all documents evidencing or relating to any of such grounds.

8. State the total amount of money or property paid or transferred by you from January 1, 1967 to the present (the "Covered Period") to Bay Ridge Action Committee ("BRAC") or any predecessor or successor entity, and as to each such payment or transfer:

(a) describe the amount of the payment or the value of the transfer;

(b) state the date of the payment or transfer; and

(c) identify the person to whom the payment or transfer was made.

9. Identify all payments or transfers of money or other property to you during the Covered Period from (1) BRAC, (2) any predecessors or successors of BRAC or (3) your attorney, as legal or consulting fees, any other kind of compensation, for reimbursement of expenses, or in exchange for property or other consideration, and as to each such payment or transfer:

(a) state the date thereof;

(b) state the dollar amount of payment or value of property;

(c) identify the person who paid or transferred the property to you;

(d) describe any property transferred; and

(e) describe the purpose of the transfer.

10. Describe all money or other property paid or transferred to you for use by you or any other person in connection with (1) this action, or (2) any activities of BRAC or any predecessors or successors, and as to each payment of money or transfer of property to you,

(a) identify the person who paid or transferred the money or property;

(b) state the amount paid or the value of the property transferred;

(c) state the date of your receipt of the money or other property; and

(d) describe the purpose of the payment or transfer.

11. Identify and describe the substance of all public communications (including but not limited to the issuance of press releases) you have made (before or after your filing of the complaint) concerning any of the matters alleged in your complaint, and as to each such public communication:

(a) state the date of the communication;

(b) describe the means of the communication;

(c) identify all documents evidencing or relating to the public communication (including but not limited to any press releases or newspaper clippings);

(d) describe any meeting or other event at which the public communication occurred and identify and describe each of the persons present at the meeting; and

(e) state the location of any such meeting or event.

12. Identify and describe each complaint (as defined in [illegible] the definitions) made by you about the Project.

FIRST SET OF INTERROGATORIES WITH REQUEST TO PRODUCE DOCUMENTS

13. Identify and describe all communications of objections by you to the Project made to any persons not included in your answer to the preceding interrogatory, and identify all related documents.

14. State whether you are or have ever been an incorporator, founder, subscriber, director, officer, contributor, member, consultant, employee, agent, investigator or attorney for BRAC or any predecessor or successor, and as to each such position or relationship,

(a) state the beginning and ending dates; and

(b) state how much compensation or other economic benefits, if any, you have received, directly or indirectly, from the BRAC or any predecessors or successors with respect to such position or relationship.

15. Identify each incorporator, founder, subscriber, director, officer, contributor, member, consultant, employee, agent, investigator or attorney of any of the other plaintiffs with whom you have a relationship by blood, marriage or business interests, and describe each such relationship.

16. State the date when you first met your attorney, and

(a) identify all persons present at the first meeting;

(b) state where the meeting occurred;

(c) identify who introduced you to your attorney;

(d) state the date of the introduction, if it occurred by telephone; and

(e) identify all documents evidencing or relating to the meeting or introduction.

17. State the date when you first discussed with your attorney any of the alleged activities of defendants which you contend are unlawful

FIRST SET OF INTERROGATORIES WITH REQUEST TO PRODUCE DOCUMENTS

18. Identify each person with whom you communicated about the possibility of bringing this action, which communication occurred prior to the date given in answer to the preceding interrogatory.

19. State each of your residence addresses for the Covered Period, and as to each such residence address:

(a) state (nearest blocks or miles) how far away it was located from the subject;

(b) state the beginning and ending dates of the residence; and

(c) describe the type of dwelling in which you resided, and

(i) if the dwelling was a 1-, 2- or 3-family house, state the approximate value of the house at the beginning and at the end of the residence period; and if you were a lessee, state the amount of your monthly rent; and

(ii) if the dwelling was an apartment building or other type of residence building not covered in the preceding subparagraph, state

(a) the number of floors;

(b) the number of family units in the building;

(c) the value of the building at the beginning and at the end of the residence period; and

(d) the amount of rent paid by you.

20. Identify each of the injuries described in answer to Interrogatory No. 6 above which is not shared by

(a) a majority of the residents of your present dwelling;

(b) a majority of the residents in your block; and

(c) a majority of the residents in your immediate neighborhood.

FIRST SET OF INTERROGATORIES WITH REQUEST TO PRODUCE DOCUMENTS

21. Identify each business or professional practice owned in whole or in part by you (and/or your spouse, if any) servicing any part of the Bay Ridge area, and describe all effects you believe the Project may have on each such business or professional practice.

22. Identify each employer and position held by you and your spouse, if any, during the Covered Period, and state the length of each employment and the monthly or weekly compensation received by you or your spouse, if any.

23. State the net worth of you and your spouse, if any, and identify the most recent financial statements, if any, which disclose your net worth.

24. Identify each other legal proceeding in which you were a party during the Covered Period in which you alleged one or more violations of the federal National Environmental Protection Act or similar state statute, rule or regulation.

25. Identify each organization, association or other group of which you are or were a director, officer or member during the Covered Period, which group has as its primary purpose the protection of the environment, and as to each such group:

(a) state the starting and ending dates of your relationship;

(b) describe the specific purpose or purposes of the group.

26. Describe briefly any civic activities in which you have participated during the Covered Period in the Bay Ridge area.

27. Identify all elective offices you have run for or held during the Covered Period.

FIRST SET OF INTERROGATORIES WITH REQUEST TO PRODUCE DOCUMENTS

28. Identify all colleges, universities, trade or professional schools and other schools you have attended, starting with high school, and as to each such school,

(a) state the dates of your attendance;

(b) state the location of the school;

(c) describe any diploma, certificate or degree you received; and

(d) describe any courses or other instruction you had in any aspect of the environment in which you claim to be an expert.

29. Identify each area of the environment in which you claim to be an expert.

30. State your age and present marital status.

TO BE ANSWERED BY BRAC ONLY:

Answer Interrogatories 6, 7, 11, 12, 13, 16, 17, 18, 24, 26 and 29 above.

31. Identify all of the officers, directors and members of BRAC, and identify all business affilations of each (employment or ownership).

32. Identify all members of each group, association or other organization which is a member of BRAC.

33. Of the members identified in answer to the 2 preceding interrogatories, identify each member who will suffer injury as a result of the Project, and describe in detail each injury.

FIRST SET OF INTERROGATORIES WITH REQUEST TO PRODUCE DOCUMENTS

34. State the date of organization of BRAC, and

(a) state the date of its approval as a not-for-profit corporation under New York law;

(b) identify each of the incorporators, subscribers and original board of directors, and attorney for the incorporators;

(c) identify any agent for service of process of BRAC as contained in its certificate of incorporation or any other papers;

(d) identify each address used by BRAC from inception to the present;

(e) describe your membership requirements at all times during the Covered Period;

(f) describe each purpose for which BRAC was organized;

(g) describe who is eligible to vote for officers or directors.

35. As to the present membership of BRAC, state what percentage is (i) Caucasian; (ii) Black; (iii) Spanish-speaking Americans; (iv) other minority groups.

36. Identify each Annual Report for BRAC from inception to date, and state where such reports have been filed and/or are presently located.

37. Identify each person who has contributed money, property or services to BRAC from inception to the present, and as to each such contribution,

(a) identify the contributor;

(b) state the type of contribution and dollar amount or value thereof;

(c) state the date of the contribution.

38. As to each group, association or other organization which is a member of BRAC, state what percentage is (i) Caucasian; (ii) Black; (iii)

Spanish-speaking Americans; (iv) other minority groups.

39. State the total amount of money and the value of property received by BRAC from inception to the present, and identify each contributor and date and amount of contribution, but only to the extent not answered in your answer to Interrogatory No. 37 above.

40. Identify and describe each fee for legal services paid by you in connection with any environmental legal proceeding, and as to each such payment:

(a) state the date and amount of the payment;

(b) identify the person to whom the fee was paid, and the legal proceeding involved.

41. Identify and describe all other expenses for litigation paid or incurred by you in connection with any environmental legal proceeding, and as to each such expense:

(a) state the date and amount of payment;

(b) identify the person to whom the payment was made;

(c) describe the purpose of the expense; and

(d) identify the legal proceeding involved.

42. Describe how and by whom and when this action was authorized to be commenced, and identify each person who participated in the decision.

43. Identify each person who participated in the decision to make any of the payments or expenses identified in answer to Interrogatories No. 40 and 41 above.

44. Who is authorized to sign checks or withdraw money from bank accounts on behalf of BRAC.

FIRST SET OF INTERROGATORIES WITH REQUEST TO PRODUCE DOCUMENTS

45. Identify each person who participated in the preparation, review, approval and/or distribution of the form letter to Citizens of Bay Ridge, dated April 30, 1975 with Shore-Hill Fact Sheet attached, from the BRAC and each other written document distributed publicly by BRAC (including press releases) concerning matters at issue in this action.

46. Identify each communication to BRAC of any objection about the Project prior to commencement of the action, and as to each such communication,

(a) identify the person who communicated with BRAC;

(b) describe the objection;

(c) state the date of the communication; and

(d) describe any action taken by BRAC with respect to the objection.

Request to Produce Related Documents

PLEASE TAKE NOTICE that, pursuant to Rule 34 of the Federal Rules of Civil Procedure, each of the plaintiffs herein shall produce for inspection and copying at the offices of the undersigned no later than June 16, 1975 at 4:00 o'clock in the afternoon each document required to be described in answer to any of the preceding interrogatories. (To the extent such documents are produced, the documents need not be described in the answers and copies need not be annexed to the answer.)

Dated: Brooklyn, N.Y.
May 12, 1975

Joseph M. Sussillo

Attorney for Defendants Thomas Ekeland, George Adams, Howard Smith, Shore Hill Housing Development Fund Company, Inc., Shore Hill Housing Company, Inc., Lu[illegible] Med Housing, Inc. & Lutheran Medical Center

437 Bay Ridge Parkway
Brooklyn, New York 11209
Tel. (212) [illegible]

AFFIDAVIT OF IDE BEYTIN OPPOSING MOTION FOR PRELIMINARY INJUNCTION.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

BAY RIDGE ACTION COMMITTEE, INC., ET AL., Plaintiffs, v. THOMAS EKELAND, HUD, LYNN, ET AL. Defendants.	No. 75 C 477

AFFIDAVIT OF IDE BEYTIN

Ide Beytin, being duly sworn, deposes and says:

1. I am the Multifamily Housing Representative responsible for processing applications of non-insured state-assisted housing projects for assistance under section 236 in the New York City Area Office of the United States Department of Housing and Urban Development. I work under the supervision of the Director of the Operations Division and the Area Director, Joseph Monticciolo. I have read the pleadings in the above captioned action. The information set forth in this affidavit is based upon my personal knowledge and information supplied to me by other employees of HUD.

2. The Shore Hill Project is an apartment complex being constructed for use by the elderly in the Bay Ridge area of Brooklyn, New York, at 91st Street and Shore Road. It is being developed by Lu-Med Housing Development Corp. (Lu-Med) and Shore Hill Housing Co., Inc., two non-profit corporations, in

cooperation with Lutheran Medical Center, Inc. and Shore Hill Fund Co., Inc. and is being financed by the New York State Housing Finance Agency under a program administered by the New York State Division of Housing and Community Renewal (DHCR). The U.S. Department of Housing and Urban Development (HUD) is committed to provide, pursuant to section 236, periodic interest reduction subsidies and rent supplement payments upon completion of construction. The project is not insured by the Federal Housing Authority.

3. The project site and the surrounding area are zoned R7-1, which permits high-rise development. This zoning has resulted in the construction of apartment structures of 6, 7 and 11 stories in an area previously comprised of single and two-family residences. The project has evolved through three phases of design. The first design, a 22-story project for the elderly containing 663 units, was approved by the Project Approval Committee of the New York State Division of Housing and Community Renewal. A few months later, on May 4, 1971, the Planning Commission of the City of New York indicated that the proposed project complied with zoning laws and other local requirements. This local body held a public hearing to obtain citizen comments and approved the 22-story proposal on October 11, 1972. HUD executed a Preliminary Reservation of Contract Authority for Section 236 interest reduction subsidy in the amount of $848,220 for this proposed project on December 27, 1972 (Exhibit 1).

Citizen dissatisfaction with the proposed 22-story project expressed at a public hearing held by the Board of Estimate in March of 1973 led to a recommendation by Lu-Med and the DHCR that the proposal be referred to the

City Planning Commission for further consideration. Three months later, a public hearing was held to consider a revised proposal for one sixteen-story building of 667 units.

Five months later, on November 13, 1973, a proposal for two 14-story buildings containing a total of 557 units was sent to the City Planning Commission. Two weeks later, on December 3, 1973, a public hearing was conducted to consider special permit authorizations necessary for such a 14-story project. Opposition to this proposal was expressed by residents of the area based on its high-rise design, its distance from shopping and transportation, and a fear that the structure would eventually be used as a welfare hotel or drug treatment center. The City Planning Commission approved the proposal for two 14-story buildings of 557 units connected by a one-story community building on January 2, 1974. That same month the New York Board of Estimate granted its approval of the 14-story project.

4. HUD's environmental evaluation of the project commenced on March 11, 1974, with the filing by DHCR of a HUD Form ECO-1 prepared by Lutheran Medical Center as sponsor of the project supplying information concerning the physical environment, the social environment, the aesthetic environment, and alternatives. A copy of this form is attached as Exhibit 7.

A Special Clearance Worksheet was prepared by Frank A. Batstone of the HUD Area Office on September 3, 1974. This evaluation considered such factors as the physical environment, including water supply, sewerage, parking and traffic, availability of public transportation, energy demand, building height,

air quality, and noise. The social environment was another factor evaluated considering density, recreation, hospital facilities, and shopping facilities. The aesthetic environment was also considered. The alternatives of providing or withholding funds to the state-financed project were evaluated. The history of controversy, including the views expressed at public hearings was also discussed and evaluated.

The contents of this clearance worksheet were approved by the Environmental Clearance Officer. The outcome of the environmental evaluation was a finding by the Environmental Clearance Officer and Director, Operations Division, on September 18, 1974, that providing assistance to the project did not constitute a major federal action significantly affecting the human environment. This environmental clearance was certified by Acting Area Counsel as fulfilling the necessary procedural steps and all legal requirements. No environmental impact statement was prepared since a Finding of Inapplicability had been made, indicating that the proposed project would not have significant environmental impact, all in accordance with HUD Handbook 1390.1, Departmental Policies, Responsibilities and Procedures for Protection and Enhancement of Environmental Quality, 38 F.R. 19182 (July 18, 1973).

5. The procedures for considering an application for interest reduction subsidy under section 236 for a project owned by a non-profit corporation for which the mortgage is not insured by FHA, as set forth in HUD Handbook 4530.1 (attached as Exhibit 11), were complied with as follows:

AFFIDAVIT OF IDE BEYTIN OPPOSING MOTION FOR PRELIMINARY INJUNCTION

a. FHA Form 3126, Preliminary Reservation of Contract Authority (Section 236), was filed by the applicant reflecting a maximum annual total amount of interest reduction payments computed on a rate of interest of 6 1/2 percent, which was less than the then current HUD-FHA rate including Mortgage Insurance Premium of 7 percent.

b. FHA Form 2530, Previous Multifamily Participation Certificate, was submitted by the applicant on March 11, 1974.

c. FHA Form 2010, Equal Employment Opportunity Certification, was filed by the applicant on March 11, 1974.

d. HUD Form EC0-1 was prepared by the sponsor on February 7, 1974, and filed by the applicant March 11, 1974, to provide environmental information.

e. An independent evaluation of the project was made on the basis of:

1. a visit to the site on March 18, 1974;

2. examining various reports and official documents, such as the Plan for the City of New York, 1969; Data Report, Aerometric Network, 1972, New York City Department of Air Resources; Hospitals and Health Related Facilities in Southern New York, 1972; City Planning Commission Reports, January 2, 1974, Calendars #12 and #13; and newspaper clippings;

3. correspondence, including a letter of May 10, 1974, from Consolidated Edison Co., a letter of August 7, 1974, from the Division of Sewer Design, Bureau of Water Pollution Control, Department of Water Resources, New York City Environmental Protection Agency to V.L.

AFFIDAVIT OF IDE BEYTIN OPPOSING MOTION FOR PRELIMINARY INJUNCTION

Falotico, Inc., Consulting Engineers, and associated letter from V.L. Falotico, Inc., and a letter dated August 12, 1974, from Sam Posner, Project Manager, Gruzen and Partners (Project Consultants);

4. telephone conversations on August 15, 1974, with staff members of V.L. Falotico, Inc., Consulting Engineers, and the Department of Water Resources of New York City; and

5. examining information supplied in connection with the project selection criterion questionnaire submitted by applicants.

f. As a result of the evaluation, HUD determined in accordance with paragraph 3-5 of Handbook 4530.1, that the Proposed Project met the standards of an adequate rating on Criterion No. 2 of the Project Selection Criteria, Minority Housing Opportunities. See FHA Form 3165 attached as Exhibit 6 to Monticciolo affidavit.

g. Before execution of the Preliminary Reservation of Contract Authority, HUD determined that the proposed basic rents with maximum subsidy were less than 25 percent of the income limits then applicable, as set forth in Handbook 4400.3 6A (now Handbook 4515.4). Prior to the approval of the increase in reservation of contract authority, HUD determined that the basic rents to be charged were again in conformity with the 25 percent of income limits requirement. These determinations were made in accordance with paragraph 3-5b of the Handbook.

h. The Preliminary Reservation and subsequent Increase of Preliminary Reservation provided that no amount of the mortgage was attributable to commercial space, in accordance with paragraph 3-6 of the Handbook.

AFFIDAVIT OF IDE BEYTIN OPPOSING MOTION FOR PRELIMINARY INJUNCTION

i. Approval of the Preliminary Reservation was granted by HUD on December 27, 1972, as indicated by the execution of the document by the Area Director in accordance with paragraph 3-7 of the Handbook.

j. Approval of the Increase in Preliminary Reservation in response to an increase in interest rate to 7 1/2 percent and a reduction in number of units was granted by HUD on November 25, 1974, in accordance with paragraph 3-16 of the Handbook.

k. An Interest Reduction Contract was executed by the Shore Hill Housing Company, Inc., the New York State Housing Finance Agency, the Commissioner of Housing and Community Renewal of the State of New York, and the Secretary of HUD on November 26, 1974, in accordance with paragraph 3-16 of the Handbook. Construction commenced in late December of 1974 or January of 1975.

Area residents have continued to express opposition to the Shore Hill Project since the completion of HUD's environmental review and the execution of the Interest Reduction Contract in November of 1974. In January of 1975, about three hundred and thirty identical form complaints were submitted to HUD requesting that then Secretary James T. Lynn restrain the New York Area Office of HUD from entering into a section 236 interest subsidy contract with respect to the Shore Hill

AFFIDAVIT OF IDE BEYTIN OPPOSING MOTION FOR PRELIMINARY INJUNCTION

Project because of an alleged failure to comply with provisions of the Housing and Community Development Act of 1974 concerning "environmental impact and community support."

Ide Beytin

IDE BEYTIN
Multifamily Housing Representative
New York City Area Office
Department of Housing and Urban Development

Subscribed and sworn to before me this 10 day of June 1975.

Frederick J Rohr

Notary Public

[illegible] New York
NOTARY PU[illegible]
No. [illegible]
[illegible] County
my commission expires [illegible] 77

AFFIDAVIT OF JAMES D. FLEMING OPPOSING MOTION FOR PRELIMINARY INJUNCTION.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

BAY RIDGE ACTION COMMITTEE, INC., et al. Plaintiffs, v. THOMAS EKELAND, HUD, LYNN, et al. Defendants	)	No. 75 C 477

AFFIDAVIT OF JAMES D. FLEMING

James D. Fleming, being duly sworn, deposes and says:

1. I am the Environmental Clearance Officer in the New York City Area Office of the United States Department of Housing and Urban Development. My duties include carrying out the appropriate level of environmental evaluation with respect to proposed housing projects which have applied for assistance under HUD-FHA programs and making recommendations for further HUD action based on the evidence developed. I have read the pleadings in the above captioned action. The information set forth in this affidavit is based upon my personal knowledge and information supplied to me by other employees of HUD.

2. The Shore Hill Project is an apartment complex being constructed for use by the elderly in the Bay Ridge area of Brooklyn, New York, at 91st Street and Shore Road. It is being developed by Lu-Med Housing Development Corp.

AFFIDAVIT OF JAMES D. FLEMING OPPOSING MOTION FOR PRELIMINARY INJUNCTION

(Lu-Med) and Shore Hill Housing Co., Inc., two non-profit corporations, in cooperation with Lutheran Medical Center, Inc. and Shore Hill Fund Co., Inc. and is being financed by the New York State Housing Finance Agency under a program administered by the New York State Division of Housing and Community Renewal (DHCR). The U.S. Department of Housing and Urban Development (HUD) is committed to provide, pursuant to section 236, periodic interest reduction subsidies and rent supplement payments upon completion of construction. The project is not insured by the Federal Housing Authority.

3. The project site and the surrounding area are zoned R7-1, which permits high-rise development. This zoning has resulted in the construction of apartment structures of 6, 7 and 11 stories in an area previously comprised of single and two-family residences. The project has evolved through three phases of design. The first design, a 22-story project for the elderly containing 663 units, was approved by the Project Approval Committee of the New York State Division of Housing and Community Renewal. A few months later, on May 4, 1971, the Planning Commission of the City of New York indicated that the proposed project complied with zoning laws and other local requirements. This local body held a public hearing to obtain citizen comments and approved the 22-story proposal on October 11, 1972. HUD executed a Preliminary Reservation of Contract Authority for Section 236 interest reduction subsidy in the amount of $848,220 for this proposed project on December 27, 1972 (Exhibit 1).

Citizen dissatisfaction with the proposed 22-story project expressed at a public hearing held by the Board of Estimate in March of 1973 led to a recommendation by Lu-Med and the DHCR that the proposal be referred to the

AFFIDAVIT OF JAMES D. FLEMING OPPOSING MOTION FOR PRELIMINARY INJUNCTION

City Planning Commission for further consideration. Three months later, a public hearing was held to consider a revised proposal for one sixteen-story building of 667 units.

Five months later, on November 13, 1973, a proposal for two 14-story buildings containing a total of 557 units was sent to the City Planning Commission. Two weeks later, on December 3, 1973, a public hearing was conducted to consider special permit authorizations necessary for such a 14-story project. Opposition to this proposal was expressed by residents of the area based on its high-rise design, its distance from shopping and transportation, and a fear that the structure would eventually be used as a welfare hotel or drug treatment center. The City Planning Commission approved the proposal for two 14-story buildings of 557 units connected by a one-story community building on January 2, 1974. That same month the New York Board of Estimate granted its approval of the 14-story project.

4. HUD's environmental evaluation of the project commenced on March 11, 1974, with the filing by DHCR of a HUD Form ECO-1 prepared by Lutheran Medical Center as sponsor of the project supplying information concerning the physical environment, the social environment, the aesthetic environment, and alternatives. A copy of this form is attached as Exhibit 7.

5. An independent evaluation of the project was made on the basis of:

1. a visit to the site on March 18, 1974;
2. examining various reports and official documents, such as the Plan for the City of New York, 1969; Data Report, Aerometric Network,

AFFIDAVIT OF JAMES D. FLEMING OPPOSING MOTION FOR PRELIMINARY INJUNCTION

1972, New York City Department of Air Resources; Hospitals and Health Related Facilities in Southern New York, 1972; City Planning Commission Reports, January 2, 1974, Calendars #12 and #13; and newspaper clippings;

3. correspondence, including a letter of May 10, 1974, from Consolidated Edison Co., a letter of August 7, 1974, from the Division of Sewer Design, Bureau of Water Pollution Control, Department of Water Resources, New York City Environmental Protection Agency to V.L. Falotico, Inc., Consulting Engineers, and associated letter from V.L. Falotico, Inc., and a letter dated August 12, 1974, from Sam Posner, Project Manager, Gruzen and Partners (Project Consultants);

4. telephone conversations on August 15, 1974, with staff members of V.L. Falotico, Inc., Consulting Engineers, and the Department of Water Resources of New York City; and

5. examining information supplied in connection with the project selection criterion questionnaire submitted by applicants.

6. A Special Clearance Worksheet was prepared by Frank A. Batstone of the HUD Area Office on September 3, 1974. This evaluation considered such factors as the physical environment, including water supply, sewerage, parking and traffic, availability of public transportation, energy demand, building height, air quality, and noise. The social environment was another factor evaluated considering density, recreation, hospital facilities, and shopping facilities. The aesthetic environment was also considered. The alternatives of providing or

AFFIDAVIT OF JAMES D. FLEMING OPPOSING MOTION FOR PRELIMINARY INJUNCTION

withholding funds to the state-financed project were evaluated. The history of controversy, including the views expressed at public hearings was also discussed and evaluated.

The contents of this clearance worksheet were approved by the Environmental Clearance Officer. The outcome of the environmental evaluation was a finding by the Environmental Clearance Officer and Director, Operations Division, on September 18, 1974, that providing assistance to the project did not constitute a major federal action significantly affecting the human environment. This environmental clearance was certified by Acting Area Counsel as fulfilling the necessary procedural steps and all legal requirements. No environmental impact statement was prepared since a Finding of Inapplicability had been made, indicating that the proposed project would not have significant environmental impact, all in accordance with HUD Handbook 1390.1, Departmental Policies, Responsibilities and Procedures for Protection and Enhancement of Environmental Quality, 38 F.R. 19182 (July 18, 1973).

James D. Fleming

JAMES D. FLEMING
Environmental Clearance Officer
New York City Area Office
Department of Housing and Urban Development

Subscribed and sworn to before me this 11 day of June 1975.

Frederick J. Rohr

Notary Public

FREDERICK J. ROHR
NOTARY Public, State of New York
No. 41-3021403
Qualified in Nassau County
Certificate filed in Nassau County

My commission expires Mar. 30, 1977

AFFIDAVIT OF JOSEPH D. MONTICCIOLO OPPOSING MOTION FOR PRELIMINARY INJUNCTION.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

BAY RIDGE ACTION COMMITTEE, INC., et al.	)	
Plaintiffs,	)	
v.	)	No. 75 C 477
THOMAS EKELAND, HUD, LYNN, et al.	)	
Defendants	)	

AFFIDAVIT OF JOSEPH D. MONTICCIOLO

Joseph D. Monticciolo, being duly sworn, deposes and says:

1. I am the Director of the New York City Area Office of the Urited States Department of Housing and Urban Development (HUD). Among my duties as Director, I am responsible for the administration of all Housing Production and Mortgage Credit-Federal Housing Administration functions and responsibilities within the New York City area, pursuant to a delegation of authority published at 39 F.R. 34656 on September 27, 1974, amending 24 C.F.R. 200.44. Included within my responsibilities for HPMC-FHA functions is the supervision of the processing of applications for assistance under section 236 of non-insured state-assisted housing projects, including the conduct of appropriate environmental reviews. I have read the pleadings in the above captioned action. The information set forth in this affidavit is based upon my personal knowledge and information supplied to me by members of my staff and other employees of HUD.

AFFIDAVIT OF JOSEPH D. MONTICCIOLO OPPOSING MOTION FOR PRELIMINARY INJUNCTION

2. The Shore Hill Project is an apartment complex being constructed for use by the elderly in the Bay Ridge area of Brooklyn, New York, at 91st Street and Shore Road. It is being developed by Lu-Med Housing Development Corp. (Lu-Med) and Shore Hill Housing Co., Inc., two non-profit corporations, in cooperation with Lutheran Medical Center, Inc. and Shore Hill Fund Co., Inc. and is being financed by the New York State Housing Finance Agency under a program administered by the New York State Division of Housing and Community Renewal (DHCR). The U.S. Department of Housing and Urban Development (HUD) is committed to provide, pursuant to section 236, periodic interest reduction subsidies and rent supplement payments upon completion of construction. The project is not insured by the Federal Housing Authority.

3. The project site and the surrounding area are zoned R7-1, which permits high-rise development. This zoning has resulted in the construction of apartment structures of 6, 7 and 11 stories in an area previously comprised of single and two-family residences. The project has evolved through three phases of design. The first design, a 22-story project for the elderly containing 663 units, was approved by the Project Approval Committee of the New York State Division of Housing and Community Renewal. A few months later, on May 4, 1971, the Planning Commission of the City of New York indicated that the proposed project complied with zoning laws and other local requirements. This local body held a public hearing to obtain citizen comments and approved the 22-story proposal on October 11, 1972. HUD executed a Preliminary Reservation of Contract Authority for Section 236 interest reduction subsidy in the amount of $848,220 for this proposed project on December 27, 1972 (Exhibit 1).

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Citizen dissatisfaction with the proposed 22-story project expressed at a public hearing held by the Board of Estimate in March of 1973 led to a recommendation by Lu-Med and the DHCR that the proposal be referred to the City Planning Commission for further consideration. Three months later, a public hearing was held to consider a revised proposal for one sixteen-story building of 667 units.

Five months later, on November 13, 1973, a proposal for two 14-story buildings containing a total of 557 units was sent to the City Planning Commission. Two weeks later, on December 3, 1973, a public hearing was conducted to consider special permit authorizations necessary for such a 14-story project. Opposition to this proposal was expressed by residents of the area based on its high-rise design, its distance from shopping and transportation, and a fear that the structure would eventually be used as a welfare hotel or drug treatment center. The City Planning Commission approved the proposal for two 14-story buildings of 557 units connected by a one-story community building on January 2, 1974. That same month the New York Board of Estimate granted its approval of the 14-story project.

4. HUD's environmental evaluation of the project commenced on March 11, 1974, with the filing by DHCR of a HUD Form ECO-1 prepared by Lutheran Medical Center as sponsor of the project supplying information concerning the physical environment, the social environment, the aesthetic environment, and alternatives. A copy of this form is attached as Exhibit 7.

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A Special Clearance Worksheet was prepared by Frank A. Batstone of the HUD Area Office on September 3, 1974. This evaluation considered such factors as the physical environment, including water supply, sewerage, parking and traffic, availability of public transportation, energy demand, building height, air quality, and noise. The social environment was another factor evaluated considering density, recreation, hospital facilities, and shopping facilities. The aesthetic environment was also considered. The alternatives of providing or withholding funds to the state-financed project were evaluated. The history of controversy, including the views expressed at public hearings was also discussed and evaluated.

The contents of this clearance worksheet were approved by the Environmental Clearance Officer. The outcome of the environmental evaluation was a finding by the Environmental Clearance Officer and Director, Operations Division, on September 18, 1974, that providing assistance to the project did not constitute a major federal action significantly affecting the human environment. This environmental clearance was certified by Acting Area Counsel as fulfilling the necessary procedural steps and all legal requirements. No environmental impact statement was prepared since a Finding of Inapplicability had been made, indicating that the proposed project would not have significant environmental impact, all in accordance with HUD Handbook 1390.1, Departmental Policies, Responsibilities and Procedures for Protection and Enhancement of Environmental Quality, 38 F.R. 19182 (July 18, 1973).

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5. The procedures for considering an application for interest reduction subsidy under section 236 for a project owned by a non-profit corporation for which the mortgage is not insured by FHA, as set forth in HUD Handbook 4530.1 (attached as Exhibit 11), were complied with as follows:

a. FHA Form 3126, Preliminary Reservation of Contract Authority (Section 236), was filed by the applicant reflecting a maximum annual total amount of interest reduction payments computed on a rate of interest of 6 1/2 percent, which was less than the then current HUD-FHA rate including Mortgage Insurance Premium of 7 percent.

b. FHA Form 2530, Previous Multifamily Participation Certificate, was submitted by the applicant on March 11, 1974.

c. FHA Form 2010, Equal Employment Opportunity Certification, was filed by the applicant on March 11, 1974.

d. HUD Form ECO-1 was prepared by the sponsor on February 7, 1974, and filed by the applicant March 11, 1974, to provide environmental information.

e. An independent evaluation of the project was made on the basis of:

1. a visit to the site on March 18, 1974;

2. examining various reports and official documents, such as the Plan for the City of New York, 1969; Data Report, Aerometric Network, 1972, New York City Department of Air Resources; Hospitals and Health Related Facilities in Southern New York, 1972; City Planning Commission Reports, January 2, 1974, Calendars #12 and #13; and newspaper clippings;

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3. correspondence, including a letter of May 10, 1974, from Consolidated Edison Co., a letter of August 7, 1974, from the Division of Sewer Design, Bureau of Water Pollution Control, Department of Water Resources, New York City Environmental Protection Agency to V.L. Falotico, Inc., Consulting Engineers, and associated letter from V.L. Falotico, Inc., and a letter dated August 12, 1974, from Sam Posner, Project Manager, Gruzen and Partners (Project Consultants);

4. telephone conversations on August 15, 1974, with staff members of V.L. Falotico, Inc., Consulting Engineers, and the Department of Water Resources of New York City; and

5. examining information supplied in connection with the project selection criterion questionnaire submitted by applicants.

f. As a result of the evaluation, HUD determined in accordance with paragraph 3-5 of Handbook 4530.1, that the Proposed Project met the standards of an adequate rating on Criterion No. 2 of the Project Selection Criteria, Minority Housing Opportunities. See FHA Form 3165 attached as Exhibit 6 to Monticciolo affidavit.

g. Before execution of the Preliminary Reservation of Contract Authority, HUD determined that the proposed basic rents with maximum subsidy were less than 25 percent of the income limits then applicable, as set forth in Handbook 4400.3 6A (now Handbook 4515.4). Prior to the approval of the increase in reservation of contract authority, HUD determined that the basic rents to be charged were again in conformity with the 25 percent of income limits requirement. These determinations were made in accordance with paragraph 3-5b of the Handbook.

AFFIDAVIT OF JOSEPH D. MONTICCIOLO OPPOSING MOTION FOR PRELIMINARY INJUNCTION

h. The Preliminary Reservation and subsequent Increase of Preliminary Reservation provided that no amount of the mortgage was attributable to commercial space, in accordance with paragraph 3-6 of the Handbook.

i. Approval of the Preliminary Reservation was granted by HUD on December 27, 1972, as indicated by the execution of the document by the Area Director in accordance with paragraph 3-7 of the Handbook.

j. Approval of the Increase in Preliminary Reservation in response to an increase in interest rate to 7 1/2 percent and a reduction in number of units was granted by HUD on November 25, 1974, in accordance with paragraph 3-16 of the Handbook.

k. An Interest Reduction Contract was executed by the Shore Hill Housing Company, Inc., the New York State Housing Finance Agency, the Commissioner of Housing and Community Renewal of the State of New York, and the Secretary of HUD on November 26, 1974, in accordance with paragraph 3-16 of the Handbook. Construction commenced in late December of 1974 or January of 1975.

Area residents have continued to express opposition to the Shore Hill Project since the completion of HUD's environmental review and the execution of the Interest Reduction Contract in November of 1974. In January of 1975, about three hundred and thirty identical form complaints were submitted to HUD requesting that then Secretary James T. Lynn restrain the New York Area Office of HUD from entering into a

AFFIDAVIT OF JOSEPH D. MONTICCIOLO OPPOSING MOTION FOR PRELIMINARY INJUNCTION

section 236 interest subsidy contract with respect to the Shore Hill Project because of an alleged failure to comply with provisions of the Housing and Community Development Act of 1974 concerning "environmental impact and community support."

Joseph D. Monticciolo

JOSEPH D. MONTICCIOLO
Director, New York City Area Office
Department of Housing and Urban Development

Subscribed and sworn to before me this 11 day of June 1975

Frederick J Rohr

Notary Public

[illegible] New York
[illegible] 1977

My commission expires

AFFIDAVIT OF REUBEN GLICK OPPOSING MOTION FOR PRELIMINARY INJUNCTION.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- x

BAY RIDGE ACTION COMMITTEE, INC., et al.,

Plaintiffs,

-against-

THOMAS EKELAND, et al,

Defendants.

75 Civ. 477
(Judge Bramwell)

AFFIDAVIT IN OPPOSITION TO MOTION FOR PRELIMINARY INJUNCTION

- x

STATE OF NEW YORK)
: ss.:
COUNTY OF [illegible])

Reuben Glick, being duly sworn, deposes and says as follows:

1. I am the President of Glick Construction Corp. ("Glick"), the general contractor for the Shore Hill Housing Company, Inc. ("Shore Hill") housing development for the elderly and submit this affidavit in opposition to the motion for a preliminary injunction in the above captioned action.

2. On December 16, 1974, Glick entered into a construction contract with Shore Hill whereby in consideration of the sum of $16,800,000.00 to be paid to it by Shore Hill, Glick was to perform the general construction of two 14 story reinforced concrete apartment houses for sole occupancy by senior citizens, and a one story community building, on a site generally bounded

AFFIDAVIT OF REUBEN GLICK OPPOSING MOTION FOR PRELIMINARY INJUNCTION

by Shore Hill, 91st Street and Colonial Road, County of Kings, City and State of New York.

3. On or about January 1, 1975, construction of the Shore Hill project commenced and as of the present date, the value of work completed in place is approximately $1,175,000.00. In addition, material orders and other commitments have been made for approximately $4,000,000.00, much of which is now in the process of special fabrication offsite for the Shore Hill development, such as windows, metal door bucks, elevators, duct work, special bathroom fixtures for the elderly, etc. For example, the concrete subcontractor has already made commitments and is having fabricated special steel form work representing an investment of approximately $500,000.00.

4. The present status of construction is as follows:

Building 1:

Foundation and walls are completed and super-structure is coming from the first to the second floor;

Building 2:

Foundation and walls are completed; first floor deck is ready for concrete to be poured.

5. We respectfully pray that an injunction temporarily halting construction of the Shore Hill development not be granted

AFFIDAVIT OF REUBEN GLICK OPPOSING MOTION FOR PRELIMINARY INJUNCTION

for the reason that it will cause Glick substantial and irreparable injuries as follows: approximately 3/4 of the 100 man work force of carpenters, concrete workers, lathers, plumbers, electricians, steamfitters, etc. would have to be immediately laid off; the remaining key workers in each of these trades would have to be kept on stand-by at a cost of $40,000.00 per month; the buildings will not be permanently enclosed by the winter time, requiring the expenditure of approximately $75,000.00 per month for winter protection, including enclosing the entire superstructure with temporary canvas tarpaulin and heating the interior areas with Butane gas heaters; a large force of guards and watchmen would have to be hired to keep out children and others from entering the development site in order to minimize theft, vandalism and damage to completed work at a cost of approximately $20,000.00 per month; under present economic conditions there is a serious risk of involvency of subcontractors during a suspension of work which would require the reletting of their work at an indeterminate increased cost; at the present rate of inflation, the increased cost of labor and material and equipment to complete the development work is estimated at approximately $300,000.00 per month for each months suspension of work; and in addition to all of the foregoing costs, would be the cost of

AFFIDAVIT OF REUBEN GLICK OPPOSING MOTION FOR PRELIMINARY INJUNCTION

borrowing money to finance these added costs which is presently estimated at the rate of approximately 10% per month.

WHEREFORE, your deponent respectfully prays that the motion for a preliminary injunction be denied.

Sworn to before me this
29th day of May, 1975.

Reuben Glick

Notary Public

JEROLD I. HIRSCHEN
Notary Public, State of New York
No. 31-[illegible] - New York County
Term Expires March 30, 19[illegible]

COPY OF AGREEMENT BETWEEN GLICK CONSTRUCTION CORP. AND ONE OR MORE OF THE SHORE HILL DEFENDANTS.



RIDER TO CONSTRUCTION CONTRACT

SHORE HILL HOUSING COMPANY, INC.

"The owner represents that it is exempt from sales and compensating use taxes of the State of New York and of Cities and Counties of the State on the purchase of all materials incorporated into the Project.

"Accordingly, it is understood that the Contractor has not included any sales or compensating use taxes on the purchase of such materials in the Contract Price set forth in Article 3 of this Agreement."

Shore Hill Housing Company, Inc.

By: [signature]

Glick Construction, Corp.

By: [signature]

Approved this 11th day of December, 1974

By: Commissioner of Housing

[signature]

COPY OF AGREEMENT BETWEEN GLICK CONSTRUCTION CORP. AND ONE OR MORE OF THE SHORE HILL DEFENDANTS

Construction Contract

SHORE HILL
Name of Project

Project No. HCNP #70-754 SR

This Contract made as of the 16th day of December, 19 74, between GLICK CONSTRUCTION CORP.,

hereinafter referred to as "Contractor," a Corporation authorized to do business in the State of New York having an office at 3000 MARCUS AVENUE, LAKE SUCCESS, NY 11040

and SHORE HILL HOUSING COMPANY, INC.,

hereinafter referred to as "Owner," a Corporation organized and existing under and by virtue of (the Not-for-Profit Corporation Law and) the Limited Profit Housing Companies Law of the State of New York, having its principal office at 4520 FOURTH AVENUE, BROOKLYN, NY 11220, New York;

WITNESSETH, that the Contractor and the Owner for the consideration hereinafter set forth, agrees as follows:

ARTICLE 1 - Scope of Work

The Contractor shall furnish all of the materials and perform all of the work required by the Contract Documents in connection with the erection and equipping of certain buildings and improvements (hereinafter referred to as the "Project") on a site generally bounded by SHORE ROAD, 91st STREET AND COLONIAL ROAD, COUNTY OF KINGS, and more particularly described and delineated in said Contract Documents which consist of the following:

(a) Drawings and Addenda, if any, which have been signed and initialed by the parties as of the 13th day of November, 19 74.

(b) Specifications, and Addenda, if any, the first and last pages of which have been signed by the parties as of the 13th day of November, 19 74, which said Specifications include "The General Conditions of the Contract for the Construction of Buildings," hereinafter referred to as "General Conditions," which are made a part hereof as if fully set forth herein. If anything in said General Conditions is inconsistent with this Contract, then this Contract shall govern. The said Drawings and Specifications have been prepared by GRUZEN & PARTNERS therein and hereinafter referred to as "Architect". A duplicate original of said Drawings and Specifications for SHORE HILL
(Name of Project)

COPY OF AGREEMENT BETWEEN GLICK CONSTRUCTION CORP. AND ONE OR MORE OF THE SHORE HILL DEFENDANTS

shall be placed on file with the Division of Housing and Community Renewal of the State of New York (hereinafter referred to as the "Division"), and when so filed shall govern in the manner hereinbefore provided (except to the extent modified under Article 12 herein) in all matters which may arise with respect to such Drawings, Specifications, Addenda, if any, General Conditions, and the provisions thereof.

(c) This instrument and exhibits hereto attached or herein referred to.

(d) Payment and Performance Bonds in forms and amounts approved by the State Commissioner of Housing and Community Renewal (hereinafter referred to as the "Commissioner").

(e) Building Loan Agreement hereafter to be entered into by and between the Owner

and the N. Y. STATE HOUSING FINANCE AGENCY
(hereinafter referred to as the "Lender").

The Contractor hereby represents that Test Borings have been made to its full satisfaction.

ARTICLE 2 - Time of Completion

The Work to be performed under this Contract shall be commenced within thirty (30) days after the closing of the Building Loan Agreement referred to in Article 5 herein and shall be completed in accordance with the Contract Documents to the satisfaction of the Architect, the Lender and the Commissioner within Twenty-four (24) months after said closing, unless said time be extended by Change Order by the Owner with the written approval of the Commissioner.

If extension of time is approved, such Change Order will be executed prior to authorization for any further payments. If such Change Order has not been executed, no further payments will be made to the Contractor except by written authorization of the Commissioner.

In no event, however, shall the Work to be performed under this Contract be considered to be completed until all construction items called for in the Contract Documents have been fully completed and all of the conditions of this Contract have been fully complied with. It is expressly agreed, however, that in no event shall the Contractor or any Surety be liable for any delay or damage resulting from, or for the construction or repair of, any work damaged or destroyed by any act of God or the public enemy or strikes or by reason of governmental preemption of materials or labor; and the Contractor shall not be liable for any cessation of Work or delay in performance of Work caused by order of the Division, or Commissioner unless such order is issued because of failure of the Contractor to comply with the terms of this Contract.

COPY OF AGREEMENT BETWEEN GLICK CONSTRUCTION CORP. AND ONE OR MORE OF THE SHORE HILL DEFENDANTS

ARTICLE 3 - The Contract Price

The Owner shall pay the Contractor for the performance of the Work embraced by this Contract, subject to additions and deductions provided herein, the sum of SIXTEEN MILLION EIGHT HUNDRED THOUSAND - - - - - - ($ 16,800,000.00) Dollars (hereinafter referred to as the "Contract Price"), subject to the method of payment hereinafter provided.

All changes to the Contract Documents must be in writing, signed by the Owner and the Contractor, and shall be conditioned upon the written approval of the Division or Commissioner, which approval may be subject to such conditions and qualifications as the Division or Commissioner, in their discretion, may prescribe; it being understood that the Division or Commissioner at all times have the right to require compliance with the original Contract Documents.

ARTICLE 4 - Schedule of Payments

Applications for payments by the Contractor to the Owner (hereinafter sometimes referred to as "Requisitions") are to be made in ten (10) copies, in the manner hereinafter provided. The Contractor shall be entitled on any such Requisition to the total of the purchase price of uninstalled materials stored on the mortgaged property or offsite, in a manner acceptable to the Division, plus the cost of the portions of the Work acceptably completed plus a pro rata payment on account of the Contractor's Fee, and referred to in Articles 19 and 20 hereof, less 10% holdback on the Contract Price less the cost of the payment and Performance Bonds and less prior advances. Requisitions shall be filed by the Contractor by the 20th day of each month and payment shall be on or about the 10th day of the following month. The Contractor shall only be entitled to payment in the amount approved by the Owner, the Division and the Lender with respect to said Requisitions.

The Contractor shall furnish an affidavit certifying that all subcontractors and materialmen have been paid to the date covered by the last advance. The Owner or the Division may require the Contractor to attach to each Requisition acknowledgments of payment to the date covered by the last advance from all subcontractors and materialmen dealing directly with the Contractor.

At any time after fifty (50%) per cent of the Work required under this Contract has been completed, if the Owner and the Commissioner agree, the Owner shall make monthly payments for the Work which may still remain to be done without making the ten (10%) per cent holdback deduction and for the difference, if any, between the amount of the holdback at the time of such agreement and the amount of holdback applicable when fifty (50%) per cent of the Work was completed. After the Commissioner has determined that the Project has been substantially completed, the remaining holdback may be paid from time-to-time and in such amounts as the Commissioner shall approve.

The value of any Work included in a Requisition for partial payment which may be unsatisfactory may be deducted from that or any subsequent Requisition.

In the event that it is necessary for the Contractor, with the approval of the Division, to store any materials offsite, then the Contractor shall be responsible for insurance and warehousing charges, and such charges shall be included in "total cost of the Work" under Article 20 herein.

Prior to the submission of the first Requisition for partial payment, the Contractor shall present to the Owner and the Division, for approval, a trade payment breakdown in a form prescribed by the Division, which shall contain the amounts estimated for such components of the Work as the Division may prescribe. These amounts, as adjusted for the approval of the Owner and the Division, shall not be changed after such approvals except with the written approval of the Commissioner. In the event the progressive audit provided under Article 20 herein indicates that payments made hereunder exceed the audited cost of the Work as referred to in Article 20, or in the event the amount of an executed subcontract is less than the amount shown for the related trade in the approved trade payment breakdown, then the Division reserves the right to require revision of the trade payment breakdown or an increase in the holdback, or both, in order to correct such conditions of overpayment or difference between the amount of the executed subcontract and the amount shown for the related trade in the approved trade payment breakdown. The values employed in making the trade payment breakdown will be used only as a guide to determine the size of the partial payments and to supply statistical information required by the Owner, the Division and the Lender and will not be considered to fix a basis for additions to or deductions from the Contract Price. The trade payment breakdown so prepared shall thereupon become a part of the Contract as if it had been fully set forth herein at the time of the execution of the Contract.

COPY OF AGREEMENT BETWEEN GLICK CONSTRUCTION CORP. AND ONE OR MORE OF THE SHORE HILL DEFENDANTS

Upon completion of the Work, the balance due the Contractor hereunder shall be payable to the Contractor by the Owner, in the manner hereinafter provided, with the approval of the Division and the Lender, within thirty (30) days from the date of final completion of this Contract, as determined by the Commissioner; provided, however, that this Contract shall not be considered complete for purposes of final payment unless and until all the Work requiring inspection by municipal or other governmental authorities having jurisdiction has been duly inspected and approved by such authorities and by the applicable Board of Fire Underwriters, if any, and all requisite certificates of occupancy and other approvals and guarantees have been duly issued and the "total cost of the Work" is determined by audit as set forth in Article 20 and agreed to by the parties hereto and the Commissioner.

*The parties hereby expressly agree that any and all payments including the final payment that may be due and payable under this Contract to the Contractor shall be paid to and received jointly

by_____and_____

as Contractor in accordance with the provisions of the Agreement by and between_____

_____and_____dated the

_____day of_____of 19____, a conformed copy of which shall be filed with the Division contemporaneously with the execution of this Contract.

ARTICLE 5 - Building Loan

The Contractor understands that the Work herein provided to be done is to be financed by a building loan secured by a Mortgage, the terms of which are set forth in the Building Loan Agreement between the Lender and the Owner, together with such other sums as may be received by the Owner in accordance with the Limited Profit Housing Companies Law.

Any other language in this Contract to the contrary notwithstanding, it is expressly understood and agreed that this Contract and the obligations and liabilities of the Owner issuing herefrom, are contingent upon and subject to the acceptance by the Lender of a Note, Building Loan Agreement and Mortgage providing for the financing of the construction of the Project. In the event that for any reason whatsoever, a Note, Building Loan Agreement and Mortgage are not entered into between the Owner and the Lender, the Owner shall not be obligated to the Contractor for any fees or other charges payable to the Contractor under this Contract, and this Contract shall be void and of no effect.

ARTICLE 6 - Submissions and Approvals

Anything contained herein to the contrary notwithstanding, whenever any statements, documents or data of any sort, nature or description are required under this Contract to be submitted to the Architect or Owner, or both, duplicates of such statements, documents or data shall be likewise submitted to the Division and the Lender, if requested by either of them or by their duly constituted representatives. Whenever it is provided in this Contract that an approval, certificate or order from the Architect shall be received either as a condition precedent to any action being taken or not taken, as the case may be, or as a prerequisite to the exercise by the parties hereto of any right or rights hereunder, including the right to receive payment under this contract, the Division or the Lender may require that such approval, certificate or order shall be accompanied by the written approval of the Division and the Lender, before being effective.

ARTICLE 7 - Mechanics' Liens

If any mechanics' liens or other claims shall be filed or maintained against the buildings, improvements or real estate appurtenant thereto, for or on account of any Work under this Contract in furtherance of the erection, construction or completion of the Work contracted for herein, then it shall be the obligation of the Contractor to make provision satisfactory to the Division and Lender for the satisfaction of such liens or claims.

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*Use only if Joint Venture

COPY OF AGREEMENT BETWEEN GLICK CONSTRUCTION CORP. AND ONE OR MORE OF THE SHORE HILL DEFENDANTS

ARTICLE 8 - Receipts and Releases of Lien

Concurrently with the Requisition for final advance the Contractor shall submit, in duplicate an affidavit certifying that there are no liens, claims or demands by subcontractors, materialmen, laborers, other employees or third persons. General Releases and releases of all claims based upon which a mechanic's lien may be asserted by the Contractor or any subcontractor shall be furnished to the Owner covering all work, labor and materials, including equipment and fixtures of all kinds, performed for or furnished to the Owner, the Contractor, subcontractors and materialmen.

ARTICLE 9 - Assignability of Contract

The Contractor shall not assign this Contract or any amount payable hereunder without the prior written consent of the Commissioner and the Lender. The Contractor, upon request shall disclose to the Division and to the Lender the names of all persons with whom it has contracted or intends to contract or hereafter contracts with respect to the Work hereunder. The Owner may assign this Contract or any rights arising hereunder, including any guarantees or warranties of workmanship or material, to the Division or the Lender.

ARTICLE 10 - Employment Practices

(a) Prevailing Wages

The Contractor agrees to pay prevailing wages and to require each subcontractor to pay prevailing wages. Each subcontract shall therefore provide that the subcontractor shall pay prevailing wages, and, in order to enable the Contractor to determine whether such wages are being paid by the subcontractor, each subcontract shall further provide that the Contractor and the Division shall have the right to inspect the subcontractor's books, payrolls and accounts with respect to the subcontract from time to time for the purpose of verifying that prevailing wages are being paid by the subcontractor. The union scale of wages paid in the locality for the work of such laborers and mechanics so employed shall be accepted by the parties hereto as the prevailing wages for such work.

Upon failure of the Contractor or any subcontractor to comply fully with the provisions of this Section, the Owner may, in its own discretion, or shall, at the direction of the Commissioner, withhold from the Contractor hereunder any payments or advances payable to the Contractor hereunder until the Contractor establishes to the satisfaction of the Division that all laborers and mechanics or other persons employed in the construction of the Project have been paid prevailing wages as hereinabove referred to.

(b) Non-Discrimination Clauses

During the performance of this Contract, the Contractor agrees as follows:

(1) The Contractor will not discriminate against any employee or applicant for employment because of sex, race, creed, color or national origin, and will take affirmative action to insure that they are afforded equal employment opportunities without discrimination because of sex, race, creed, color or national origin. Such action shall be taken with reference, but not limited, to: recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff or termination, rates of pay or other forms of compensation, and selection for training or retraining, including apprenticeship and on-the-job training.

(2) The Contractor will send to each labor union or representative of workers with which it has or is bound by a collective bargaining or other agreement or understanding, a notice,

COPY OF AGREEMENT BETWEEN GLICK CONSTRUCTION CORP. AND ONE OR MORE OF THE SHORE HILL DEFENDANTS

to be provided by the State Division of Human Rights advising such labor union or representative of the Contractor's agreement under clauses (1) through (8) (hereinafter called "non-discrimination clauses"). If the Contractor was directed to do so by the Commissioner as part of the bid or negotiation of this Contract, the Contractor shall request such labor union or representative to furnish it with a written statement that such labor union or representative will not discriminate because of sex, race, creed, color or national origin, and that such labor union or representative either will affirmatively cooperate, within the limits of its legal and contractual authority, in the implementation of the policy and provisions of these non-discrimination clauses or that it consents and agrees that recruitment, employment and the terms and conditions of employment under this Contract shall be in accordance with the purposes and provisions of these non-discrimination clauses. If such labor union or representative fails or refuses to comply with such a request that it furnish such a statement, the Contractor shall promptly notify the State Division of Human Rights of such failure or refusal.

(3) The Contractor will post and keep posted in conspicuous places, available to employees and applicants for employment, notices to be provided by the State Division of Human Rights setting forth the substance of the provisions of clauses (1) and (2) and such provisions of the State's laws against discrimination as the State Division of Human Rights shall determine.

(4) The Contractor will state, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, that all qualified applicants will be afforded equal employment opportunities without discrimination because of sex, race, creed, color or national origin.

(5) The Contractor will comply with the provisions of Section 291-299 of the Executive Law and the Civil Rights Law, will furnish all information and reports deemed necessary by the State Division of Human Rights under these non-discrimination clauses and such sections of the Executive Law, will permit access to their books, records and accounts by the State Division of Human Rights, the Attorney General and the Commissioner for purposes of investigation to ascertain compliance with these non-discrimination clauses and such sections of the Executive Law and Civil Rights Law.

(6) This Contract may be forthwith canceled, terminated or suspended, in whole or in part, by the Commissioner upon the basis of a finding made by the State Division of Human Rights that the Contractor has not complied with these non-discrimination clauses and the Contractor may be declared ineligible for future contracts made by or on behalf of the State or a public authority or agency of the State, or contracts requiring the approval of the Commissioner until they have satisfied the State Division of Human Rights that they have established and are carrying out a program in conformity with the provisions of these non-discrimination clauses. Such findings shall be made by the State Division of Human Rights after conciliation efforts by the State Division of Human Rights have failed to achieve compliance with these non-discrimination clauses and after a verified complaint has been filed with the State Division of Human Rights, notice thereof has been given to the Contractor and an opportunity has been afforded it to be heard publicly in accordance with the procedures of the Division of Human Rights. Such sanctions may be imposed and remedies invoked independently of or in addition to sanctions and remedies otherwise provided by law.

(7) If this Contract is canceled or terminated under clause (6), in addition to other rights of the Owner, Commissioner or Lender provided in this Contract upon its breach by the Contractor, the Contractor will hold the Owner and the Lender harmless against any additional expenses or costs incurred by the Owner and/or the Lender in completing the Work or in purchasing the services, materials, equipment or supplies contemplated by this Contract, and the Owner and/or the Lender, at the direction of the Commissioner, shall withhold payments from the Contractor in an amount sufficient for this purpose and recourse may be had against the surety on the performance bond if necessary.

(8) The Contractor will include the provisions of clauses (1) through (7) in every subcontract or purchase order in such a manner that such provisions will be binding upon each

COPY OF AGREEMENT BETWEEN GLICK CONSTRUCTION CORP. AND ONE OR MORE OF THE SHORE HILL DEFENDANTS

subcontractor or vendor as to operations to be performed within the State of New York. The Contractor will take such action in enforcing such provisions of such subcontract or purchase order as the Commissioner may direct, including sanctions or remedies for non-compliance. If the Contractor becomes involved in or is threatened with litigation with a subcontractor or vendor as a result of such direction by the Commissioner, the Contractor shall promptly so notify the Attorney General, requesting him to intervene and protect the interests of the State of New York and the Lender.

ARTICLE 11 - Permits and Surveys

Notwithstanding any other provisions of the Contract Documents which form a part hereof, the Contractor shall furnish and pay for all permits and surveys including but not limited to, licenses, tools, equipment, utilities and temporary structures necessary for the construction of the Project as required.

The Contractor shall also furnish to the Owner, to the Title Insurance Company or Companies insuring the interest of the Lender, and three (3) copies of same to the Division, a survey showing the location on the site of improvements existing thereon. Such survey shall be brought up to date with each Requisition in accordance with such requirements as the Lender or the Commissioner may from time to time establish. The minimum standards for all surveys are set forth in Exhibit I attached. All surveys shall be certified to the Lender, the Commissioner and the aforesaid Title Insurance Companies and shall bear the name, address and signature of the licensed surveyor, his official seal or license number, and the date of his survey. The survey accompanying the Requisition for final payment shall show the exact location of all improvements, utilities, including water, sewers, gas and electric services, and of all existing easements for such utilities. The surveyor shall certify that the Project is installed and erected entirely upon the site covered by the mortgage referred to in Article 5 herein, and within the building restriction lines, if any, on said site and does not overhang or encroach upon any easement or right-of-way of others except as may be permitted by franchise or otherwise by the City of New York or any other governmental authority. Any deviation from the Contract Documents with respect to the location on the site of the improvements shall be the sole responsibility of the Contractor and the cost of repair shall not be chargeable as part of the "total cost of the Work" defined in Article 20 herein.

The Contractor shall furnish, upon demand by the Division, to the Owner, the Lender and the Division, quantity surveys, made by an independent outside agency of all material required in connection with the Contract.

The cost, in the amounts approved by the Division, of all such permits, surveys, and other items referred to in this Article shall be included in the "total cost of the Work" under Article 20 herein.

ARTICLE 12 - Change Orders, Proceed Orders, Written Authorizations

Changes in the scope of the Work from that indicated on the approved Drawings and in the Specifications are not to be performed by the Contractor unless a Change Order, Proceed Order or Written Authorization of such change shall be first agreed upon in writing between the Owner and the Contractor and approved by the Division in writing. No written authorization of the Division shall be effective unless signed by the Assistant Commissioner - Planning and Construction, or Deputy Commissioner - Design and Construction.

Only on a Change Order for extra work which increases the Contract Price, shall the Contractor be allowed an amount equal to _____ per cent (_____%) of the net amount of such Change Order as Contractor's Fee. With respect to Work deleted by a Credit Change Order, no deduction shall be made in the amount set forth in Article 16 herein.

Where the extra work, whether or not the Contract Price is increased, is performed by a subcontractor, the Contractor shall not pay such subcontractor nor shall there be recognized as part of the amount of the Change Order, a sum greater than fifteen per cent (15%) of the cost of the net additional work as compensation for the subcontractor's overhead and profit.

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Where the extra work increases the Contract Price and is performed by a subcontractor, the Contractor's Fee of _____ per cent (_____%) shall be applied on the net increase cost of such Change Order, including the amount allowed as the subcontractor's overhead and profit.

In the event the costs cannot be determined at the time changes in the scope of the Work are required to be performed, Proceed Orders or Written Authorizations will be issued authorizing the proposed changes. Proceed Orders and Written Authorization, shall be superseded by the submission of Change Orders to the Division within 30 days of the completion of the Work. If the procedure as outlined above is not followed, request for payment for this extra Work may be disapproved by the Division.

Change Orders issued for extra work or to delete work pursuant to the terms of this contract shall indicate on the face thereof the amount, if any, by which the Contract Price shall be adjusted thereby and the amounts or maximum amounts which shall be included in or recognized as costs, charges or expenses, to the extent paid and/or incurred by the Contractor and/or the Owner in the performance of this Contract, and/or by which the applicable subcontracts shall be adjusted.

ARTICLE 13 - Insurance

Anything to the contrary contained in the General Conditions notwithstanding, the Contractor agrees that the following insurance shall be obtained and paid for by it and be in effect from the inception of construction or from such time as the Division may direct:

1. Builder's Risk Fire Insurance With Extended Coverage on a completed value basis for full insurable value covering the interest of the Owner and the Contractor (and containing a waiver of subrogation against the Contractor's subcontractors or sub-subcontractors) upon all work incorporated in the structures and all materials and equipment, on or about the premises intended for permanent use in the structures or incident to the construction thereof, the cost of which is included in the Work hereunder, but not including the machinery, tools or equipment used by the Contractor, its subcontractors and sub-subcontractors in the performance of the Work.

2. Broad Form Comprehensive General Liability Insurance covering the Contractors with limits of $600,000/$1,000,000 for bodily injury and $100,000/$200,000 for property damage.

3. Workmen's Compensation and Employer's Liability Insurance covering the Contractor.

4. Owner's Protective Liability Insurance covering the Owner with limits of $600,000/-$1,000,000 for bodily injury and $100,000/$200,000 for property damage.

The policies of such insurance shall be in such form and with such companies as shall be approved by the Owner, the Division and the Lender and copies of all insurance policies shall be delivered to the Owner and the Division prior to the aforesaid effective date. The cost of such insurance shall be included in the "total cost of the Work" as defined in Article 20 herein.

The Contractor further agrees to indemnify and save harmless the Owner, the State of New York, and the Lender, against loss or expense by reason of the liability imposed by law upon the Contractor, the Owner, the State of New York and the Lender, for damages because of bodily injuries, including death at any time resulting therefrom, accidentally sustained by any person or persons or on account of damage to property arising out of or in consequence of the performance of this Contract, whether such injuries to persons or damage to property are due or claimed to be due to any negligence of the Contractor, its or their employees or agents, or any other person.

ARTICLE 14 - Execution of Instruments

The Owner shall designate, in writing, an officer, or officers, of the Owner as its representative with full authority to execute any and all instruments requiring the signature of the Owner and to act in behalf of the Owner with respect to all matters arising out of this Contract.

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The Owner will execute all bonds, notes, mortgages, agreements, certificates, affidavits, applications and other instruments which may be required by the Division and/or the Lender and/or utility companies in connection with or necessary for the closing transaction with the Lender and the performance of this Contract by the Contractor, and for advances under the Building Loan Agreement and Mortgage, until full and final payment to the Contractor of all sums due it under this Contract, and the discharge of the Contractor from all obligations under the Contract and Payment and Performance Bonds furnished hereunder.

If any agreement or instrument to be executed by the Owner shall require the approval of the Commissioner as a prerequisite to its legality, or if any such agreement or instrument shall not be binding upon or enforceable against the Owner unless and until approved by the Commissioner, then and in such event, the Owner shall deliver to the Contractor, prior to or at the time that each such agreement or instrument shall be executed by the Owner, the written approval and consent of the Commissioner to the execution of such agreement by the Owner. Whenever the approval of the Commissioner is required under the terms of this Contract, such approval may be given by his duly authorized representative employed by the Division.

ARTICLE 15 - Subcontracts

The Contractor shall select competent and experienced subcontractors and materialmen and establish fair and reasonable amounts for contracts with them for work performed and material furnished, and may revise, amend, modify or cancel any contract or agreement made with any subcontractor or materialman to the extent that same do not affect the Contract Documents as, in the discretion of the Contractor, may be necessary or advisable but such revision, amendment, modification or cancellation shall not affect the "total cost of the Work" as defined in Article 20 herein, if disapproved in writing by the Division, within thirty (30) days after submission in writing to the Division and to the Owner by the Contractor. The Contractor shall maintain in its files all proposals received by it from subcontractors and materialmen including detailed proposals covering any change order issued as a result of a revision, amendment, or modification. In addition to the foregoing, the Contractor shall supply the Division with three (3) copies of all subcontracts to be delivered promptly after execution, plus three (3) copies of all revisions, amendments or modifications issued by the Contractor to any subcontractor. No payment shall be made on account of work performed or materials furnished by a subcontractor or a materialman under a subcontract or purchase order unless there shall have been filed with the Division, prior to the submission of a Requisition for each payment, three (3) copies of such subcontract or purchase order containing the provisions required by this Contract to be contained therein.

The Contractor agrees to include a provision in all subcontracts and purchase orders that in order to enable the Commissioner to verify the Contractor's costs, the Commissioner shall have the right to have representatives obtain access during working hours to the books of account and records of the subcontractors or materialmen relating to the Work under this Contract, including the right to make excerpts from such books and records.

Notwithstanding the provisions of this Article 15, if the Contractor or any officer or director of the Contractor, or any stockholder holding ten per cent (10%) or more of the voting stock of the Contractor; or any person having directly or indirectly an interest of ten percent (10%) or more in the Contractor, also is a subcontractor or materialman, or is an officer or director of a subcontractor or materialman, or stockholder holding ten per cent (10%) or more of the voting stock of the subcontractor or materialman, or any person having directly or indirectly an interest of ten per cent (10%) or more in the subcontractor or materialman, then the Contractor shall disclose in writing to the Division the identity of such subcontractor or materialman prior to the performance of any Work or furnishing of any material by such subcontractor or materialman and shall certify simultaneously with the Requisition for any payment to such subcontractor or materialman, that the amount paid to such subcontractor or materialman is a fair and reasonable price for the work and/or materials.

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ARTICLE 16 - Completion and Final Payment Under Building Loan

If the Work required under said Contract Documents and the Project shall have been substantially completed, as determined by the Commissioner, the Owner, upon demand by the Division, shall establish an escrow fund, in such amount and subject to such conditions as the Division may require, to cover the cost of completion of such Work, provided, however, that the Lender shall concur in the making of the payment of the final advance under the Building Loan Agreement.

ARTICLE 17 - Payment and Performance Bonds

The Contractor shall furnish the Owner and the Lender at or before the Building Loan Agreement Closing between the Owner and the Lender with five copies of an executed bond in the amount of SIXTEEN MILLION EIGHT HUNDRED THOUSAND - - - - - ($ 16,800,000.00) as security for the payment of all persons performing labor or furnishing materials in connection with this Contract, and an executed bond in the amount of SIXTEEN MILLION EIGHT HUNDRED THOUSAND - - - - - ($ 16,800,000.00) to secure the faithful performance of this Contract, prepared on such forms of bonds and having as surety or surety companies thereunder as are approved by the Lender and the Division.

ARTICLE 18 - Payment of Building Loan Advances to Contractor

The Owner agrees to pay over to the Contractor all payments on account of all items covered by this Contract promptly upon receipt thereof from the Lender provided the Contractor is entitled to receive them and such payments shall be received by the Contractor on account of the Contract Price. If requested by the Lender, a representative of the Owner, authorized to execute receipts, endorsements and other instruments, shall attend each payment. The Owner shall give the Contractor prior notice of the time and place of each such payment.

ARTICLE 19 - Compensation for Contractor's Fee

The sum of EIGHT HUNDRED THOUSAND - - - - - ($ 800,000.00) included in the above specified Contract Price, shall compensate the Contractor for the following items: Contractor's fee and home office overhead in connection with the construction of the Project; miscellaneous traveling and expediting costs; bookkeeping expenses; the Contractor's legal and accounting expenses.

ARTICLE 20 - Audits and Determination of Savings Under Contract

Within twenty (20) days after completion of the Project, but prior to the final payment for all the Work required hereunder, the Contractor shall deliver to the Owner and to the Division an audit prepared by the Contractor's Certified Public Accountant, certifying in detail the total costs, charges and expenses heretofore and hereafter paid and/or incurred by the Contractor and/or the Owner in the performance of this Contract within the scope of Article 1, but exclusive of all sums paid and/or incurred by the Contractor for the items set forth in Article 19 herein with respect to which no audit shall be made or delivered. To the total costs, charges and expenses incurred by the Contractor and/or the Owner in connection with this Contract, including change orders but exclusive of all sums paid and/or incurred by the Contractor for the items set forth in Article 19 herein there shall be added the sum of EIGHT HUNDRED THOUSAND - - - - - ($ 800,000.00) to cover the costs and expenses set forth in Article 19 herein, whether such costs and expenses be more or less than the said sum EIGHT HUNDRED THOUSAND - - - - - ($ 800,000.00). The total of the foregoing sums are hereafter in this article

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referred to as the "total cost of the Work." If the total of the original Contract Price provided in this Contract, and the debit and credit change orders as agreed to by the parties hereto and approved by the Commissioner shall be greater than the "total cost of Work," the amount by which it exceeds the "total cost of the Work" shall be considered a saving. The Owner shall be entitled to such saving provided, however, that any surety shall not be liable for the return of such saving.

The Division shall have the right to audit and the Owner shall have the right to an independent audit of the Contractor's cost progressively during the course of the Work and upon completion of the Work.

The audit by the Division to determine the Contractor's costs and savings hereunder shall be binding and conclusive upon the parties hereto unless within thirty (30) days after the delivery thereof, the Contractor or Owner shall notify the Division in writing that the determinations made in said audit are not acceptable. In such event and within a period of thirty (30) days after such delivery, the Owner or the Contractor may, each at its own expense, cause an audit to be made by an accountant of its own choice certifying the total costs, charges and expenses heretofore and hereafter paid and/or incurred by the Contractor and/or the Owner in the performance of this Contract, but exclusive of all sums paid and/or incurred by the Contractor for the items set forth in Article 10 herein, with respect to which no audit shall be made, and if, within ten (10) days after the completion and delivery thereof, the parties hereto are unable to agree upon the amount of such savings, if any, the items in dispute including any dispute which arose out of the Work included in this Contract, shall be submitted to arbitration in accordance with the rules of the American Arbitration Association. In the event the Owner and/or the Contractor fails to make and deliver an audit, then any matters may proceed to arbitration as hereinbefore provided. The Owner may adopt the audit of the Division as its own for the purpose of such arbitration. The decision pursuant to any arbitration shall be binding upon the parties hereto, if accepted by the Commissioner, who does not intend to surrender any of his powers and duties under the Private Housing Finance Law notwithstanding any provision in any of the Contract Documents to the contrary. The cost of such arbitration shall be borne equally by the Owner and the Contractor. Such audit and/or arbitration expenses incurred by the Contractor shall not be subject to reimbursement.

The Contractor agrees that the representatives of the Division shall have full and free access without delay, during working hours, to all books of account and records of the Contractor relating to the Work under this Contract, including the right to make photostatic copies of or excerpts or transcripts from such books of account and records and related and supporting documents and statements, including but not limited to bank statements, checks paid by banks and checkbook stubs. The Contractor agrees to maintain said books and records at

3000 MARCUS AVENUE, LAKE SUCCESS, NY 11040, New York.

Facilities for the Auditor shall be provided including a desk, chair, adding machines, and telephone at the said address of the Contractor and at the office of the Owner.

Separate bank accounts as prescribed by the Division or Lender and Books of account and records shall be maintained by the Contractor in connection with this Contract. Entries shall not be made therein with respect to any other job of the Contractor. The separate books of account shall include, but need not be limited to: General Ledger, Cash Receipts Book, Cash

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Disbursements, Voucher Register, Payroll Register, Insurance Register and Contractor's Ledger. All disbursements under this Contract shall be made by check from the separate bank account or accounts established by the Contractor. No deposits therein or withdrawals therefrom shall be made by the Contractor with respect to any other construction job. The Contractor shall use the Uniform System of Accounts prescribed by the Division in the Accounting Manual for Limited Profit Housing Companies.

For the purpose of determining savings, if any, the "total cost of the Work" shall be determined by the Division without regard to the overrun or underrun with respect to the Contract Price of this Contract provided that nothing herein contained shall be deemed to limit the right of the Division to determine whether or not any item of actual cost is properly includible in the "total cost of the Work."

ARTICLE 21 - Contract Under Private Housing Finance Law

The Contractor understands and recognizes that the Owner and this Contract are subject to the provisions of the Private Housing Finance Law and the rules, regulations and supervision of the Commissioner. It is further agreed that this Contract shall not become effective prior to approval thereof by the Commissioner.

ARTICLE 22 - Sale of Notes by the New York State Housing Finance Agency

It is understood and agreed by all parties to this Contract that this instrument shall be binding notwithstanding that there may be a sixty (60) day delay in the sale of notes by the New York State Housing Finance Agency, after the closing of the Building Loan Agreement, to cover the first construction draw-down.

ARTICLE 23 - Sole Agreement of Parties Contained in This Contract

It is agreed and understood that all understandings and agreements heretofore had between the parties hereto are merged in this Contract which fully and completely expresses their agreement. This Contract shall not be modified or amended except by written agreement, between the parties, approved by the Commissioner.

ARTICLE 24 - Captions

The captions used for the Articles in this Contract are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope of the intent of this Contract, or any Article thereof.

IN WITNESS WHEREOF, the parties hereto have executed this Contract as of the day and year first above set forth.

CONTRACTOR: GLICK CONSTRUCTION CORP.

(SEAL) By: _____ President

OWNER: SHORE HILL HOUSING COMPANY, INC.

(SEAL) By: _____ President

Approved this 16th day

of December, 1974

_____

Commissioner of Housing and Community Renewal of The State of New York

COPY OF AGREEMENT BETWEEN GLICK CONSTRUCTION CORP. AND ONE OR MORE OF THE SHORE HILL DEFENDANTS

EXHIBIT I

A. Initial Survey

1. The surveyor's field work must be performed with transit and steel tape and its accuracy proved by a closed traverse, wherever possible, according to the following standard:

Locality	*Maximum Error of Closure*
Cities	1 foot in 15,000 feet
Suburban and country areas	1 foot in 10,000 feet
Mountainous and rugged terrain	1 foot in 3,000 feet

2. All measurements to be in accordance with the United States Standard, except in those cases where mapped areas, by their physical establishment, produce a standard of their own. The boundaries as well as the lines of interior subdivisions should contain all the data necessary to establish the correctness of the mathematical figure represented by said lines; that is, all angles must be given either directly or by bearings and where curved, elements of the curve should be given, that is, the radius and the length of curve, together with the bearing and length of the chord. In cases of city or village lots and plots, distances to the nearest intersecting street must be given and where conditions and layout permit, the distance to the intersecting street in both directions from the surveyed premises. The bearing of the nearest intersecting street should be indicated. On surveys of large plots and acreage or farms, names of adjacent owners should be given. Surveys of parcels within a large tract should be related to one of the exterior lines of the tract preferably by distance along a street.

3. When the parcel surveyed is laid out on a filed map, survey must designate the title of the map, file date, map number and lots and blocks of the premises. In any case when all or any part of the parcel is or was shown on any other filed map or maps - whether existing or abandoned - such lot, street and map lines should be indicated or superimposed on the survey. When the streets and lot lines are identical with another map, a notation to that effect can be made.

4. When possible the bearings given should refer to the deed meridian or at all events must be referred to some well fixed line so that they may be re-established with accuracy. Where the two differ show both. Magnetic bearings should be avoided.

5. The character of all evidence of possession, along the bounding lines whether fence, wall fence, buildings, monuments or otherwise must be stated and the location thereof carefully given in relation to reference or record description lines. Where there is no physical possession the record line should bear the statement "No physical bounds."

6. The character and location of all buildings upon the plot must be shown and their location given with reference to boundaries. Proper street numbers should be shown wherever available. On acreage surveys buildings remote to boundary lines may be plotted to scaled position. Easements of all kinds created by roads, rights of way, brooks, drains, telegraph, electric or telephone lines, etc., on or across the property should be noted and located. Surface indications of underground easements should also be shown. If the property be absolutely vacant, the survey should bear the statement "Vacant Property."

7. All buildings or fences on adjoining lands within seven (7) feet of the reference or record lines should be shown and located, and all encroachments of eaves, cornices, blinds, etc., noted.

8. The nature, character and location of all walls (independent, party or otherwise) at or near boundary lines must be given. Location of both sides of party walls should be shown. If building on premises has no independent wall but uses any wall of adjoining premises, this condition should be shown and explained. The same requirements apply where conditions are reversed. All encroaching structural appurtenances and projections such as . . . fire escapes, bay windows, windows that open out, flue pipes, stoops, areas . . . steps, trim, etc., by or on adjoining property or on abutting streets must be indicated with the extent of such encroach-

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ment or projection. Openings such as windows, doors, etc., in walls of premises or adjoining premises adjacent to the boundary lines (other than street lines) should be shown.

9. The map of survey must in all cases be prepared upon tracing cloth, in black ink only and without color. In order that the survey may give a clear presentation of the facts due regard should be had for the scale of the map and supplementary or exaggerated diagrams should be given where necessary.

10. The Contractor will furnish the surveyor with a record description and the survey should be referred thereto. In any event a reference to the basis for the lines of reference used, whether filed map, deed description or otherwise should be given.

11. Except in the case of city or village lots the area of the plot should always be given.

12. The legal lines of streets, roads and avenues should be given; changes and proposed changes in the lines of the streets should be noted and date of change and authority under which it was made given. Where there is any doubt as to the location on the ground of street and lot lines, namely: Where the authorities for laying out the streets and lots have not properly or definately defined the same by monuments in the ground, or where there are errors in the setting of monuments or in the descriptions of maps laying out the streets and lots, the nature of the difficulty should be given and the range of possible differences defined. While the surveyor is naturally expected to use good judgment in deciding such cases, it is evident that another surveyor with equally good judgment may differ, and it is this possibility for which it is intended to provide by the explanation called for in the preceding paragraph.

13. The north point should always be indicated in ink, and within the upper left or upper right quadrant of the tracing or drawing.

14. If the survey is that of a lot, lots or parts of lots on a filed map or sub-division, the lot number, block, if any, lot lines and adjoining lot numbers must be shown.

15. Cemeteries and burial grounds located within the premises must be shown by actual location.

16. Surveys of multiple parcels must clearly indicate contiguity, gores or overlaps.

17. All monuments, stakes and marks found or placed, must be shown.

18. Joint or common driveways must be indicated. Independent driveways along the boundary must be shown together with the width thereof.

19. Redates of "foundation" or "under construction" surveys of new buildings must take into consideration all the requirements herein and a special note should be made and care taken to indicate any changes in offsets or any encroachments which have arisen since the date of the original survey, including, but not limited to, possible encroachments of driveways strips, ribbons, or aprons at the corners of irregular lots on curved streets.

20. If streets abutting the premises are not physically opened, so indicate on the survey.

B. Monthly Updated Surveys

The Contractor shall furnish monthly, a survey prepared and certified by a Licensed Land Surveyor acceptable to the Title Insurance Company. The monthly survey shall indicate the progress of construction, and shall be updated to not earlier than the 25th of each month. This survey shall reach the Division of Housing and Community Renewal not later than the first day of the following month. The surveys are submitted to the Division of Housing and Community Renewal in triplicate.

The monthly surveys shall include as soon as available the following information:

Site Information

1. Project property lines (courses, distances and angles), streets, right-of-ways, easements, monuments, bench marks, coordinates if available, and area tabulation.

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2. Existing and new utilities within the site, including interior drainage structures, hydrants, lighting standards, etc.

3. All pertinent information (location, dimensions, offsets, encroachments, overhangs and grades) for any physical improvement located on or within 5 feet of the property lines as a check against possible encroachment.

4. Location of building(s) with measurements from the property lines and all other physical structures.

5. Location of retaining walls, if any.

6. Layout and alignment data for all walks, roadways, curbs, parking areas, general paved areas and all fencing.

7. Location of major existing trees, 12 feet in height and over that are to remain.

8. Indication of top and bottom grades of walls and curbs (every 50 feet).

9. Indication of drainage pattern in paved areas through the establishment of a sufficient number of spot grades.

10. Indication of the elevation of top of frame of all drainage inlets.

11. Establishment of spot elevations at building entrances and walk intersections.

12. Designation of the general contouring of planted areas at 1 foot intervals.

BUILDING INFORMATION

The Surveyor shall show the actual locations and elevations of all work in relation to those shown on the Contract Drawings, including but not restricted to the following:

1. Elevations of all spread footings, tops of all piers and tops of all foundation walls.

2. Location of all footing centers and pier centers, including those for exterior wall columns. Centers of dowel locations are not to be used for footing centers.

3. Location of all foundation walls including wall columns, and elevator pit walls.

4. Indication of finished first floor elevations.

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Construction Contract - Std. Form

D-LPH 6.3 (10-71) (Items 1, 2 & 3)
D-LPH 6.3 TE (11-71) TAX EXEMPT (Item 2 & Item 3 part (b) only)
D-LPH 6.3 LP (11-71) LIMITED PARTNERSHIP (Item 2 & Item 3 part (b) only)
D-LPH 6.3 RH (12-72) REHABILITATION (Item 1, Item 2 part (b) only & Item 3)

ITEM #1 ARTICLE 4 - Schedule of Payments, Page 3, Paragraph 1, Line 7, word payment should read "Payment".

ITEM #2(a) ARTICLE 4 - Schedule of Payments, Page 3, Paragraph 1, the next to the last sentence starting with the word "Requisitions" and ending with the word "month" in all cases should now read "Requisitions shall be filed by the Contractor by the 20th day of each month and payment shall be made on or about the 10th day of the following month".

(b) Also, Page 4, Line 7, delete the words and punctuation - "applicable Board of Fire Underwriters, if any", and substitute therein "New York Board of Fire Underwriters".

ITEM #3(a) ARTICLE 20 - Audits and Determination of Savings Under Contract, Page 10, third line from bottom after word "sum" and word "of".

(b) Also, Page 11, third paragraph from top, lines eleven and twelve delete the following words and punctuation - "including any dispute which arose out of the Work included in this Contract,".

(Seal)

CONTRACTOR: GLICK CONSTRUCTION CORP.

By _____
President

(Seal)

OWNER: SHORE HILL HOUSING COMPANY, INC.

By _____
President

Approved this 16th day

of December

_____
Commissioner of Housing and Community Renewal of the State of New York

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ADDENDUM No. 2 8/5/74

Construction Contract - Std. Form

D - LPH 6.3 (10-71)
D - LPH 6.3 T E (11-71)
D - LPH 6.3 L P (11-71)
D - LPH 6.3 RH (12-72)

ARTICLE 12 - Change Orders, Proceed Orders, Written Authorization, Pages 7 and 8, delete in its entirety. Substitute new ARTICLE 12 as follows:

ARTICLE 12 - Change Orders, Written Authorizations

The Owner, without invalidating the Contract, may at any time make changes by altering or changing the Work or by ordering extra work by written order.

Changes in the scope of the Work from that indicated on the approved Drawings and in the Specifications are not to be performed by the Contractor unless a Change Order or Written Authorization of such change shall be first agreed upon in writing between the Owner and the Contractor and approved by the Division in writing. No written authorization of the Division shall be effective unless signed by the Assistant Commissioner - Planning and Construction, or Deputy Commissioner - Design and Construction.

Where the extra work, whether or not the Contract Price is increased, is performed by a sub-contractor, the Contractor shall not pay such subcontractor nor shall there be recognized as part of the amount of the Change Order, a sum greater than fifteen per cent (15%) of the cost of the net additional work as compensation for the subcontractor's overhead and profit.

Only on a Change Order for extra work which increases the Contract Price, the Contractor shall be allowed an amount equal to six percent (6%) of the net amount of such Change Order as the Contractor's Overhead* and Profit, where the work is performed by a subcontractor or subcontractors.

Where the extra work is performed by the Contractor with his own field force, an amount equal to fifteen (15%) percent of the net amount of such Change Order as the Contractor's Overhead and Profit will be allowed.

*Overhead is defined as an allowance to compensate for all costs (other than labor and materials), charges and expenses, direct or indirect, necessary to incorporate the extra work into the Project. Overhead shall be considered to include, but not be limited to, insurance, field supervisors and assistants above the level of foreman, use of small tools and minor equipment, incidential job burdens and general office expense, etc.

In the event the costs cannot be determined or agreed upon at the time changes in the scope of the Work are required to be performed, Written Authorizations will be issued authorizing the proposed changes. Written Authorization shall be superseded by the submission of Change Orders to the Division within 30 days of the completion of the Work. If the procedure as outlined above is not followed, request for payment for this extra work may be disapproved by the Division.

Change Orders issued for extra work or to delete work pursuant to the terms of this Contract shall indicate on the face thereof the amount, if any, by which the Contract Price shall be adjusted thereby and the amounts or maximum amounts which shall be included in or recognized as costs, charges and expenses, to the extent paid and/or incurred by the Contractor and/or the Owner in the performance of this Contract, and/or by which the applicable subcontracts shall be adjusted.

(Seal)

CONTRACTOR: GLICK CONSTRUCTION CORP.

By _____
President

(Seal)

OWNER: SHORE HILL HOUSING COMPANY, INC.

By _____
President

Approved this 16th day
of December

_____
Commissioner of Housing and Community Renewal
of the State of New York

MEMORANDUM INCORPORATING FINDINGS OF FACT AND ORDER OF JUDGE DOOLING DENYING MOTION FOR PRELIMINARY INJUNCTION.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- -X

BAY RIDGE ACTION COMMITTEE, INC., et al.,

Plaintiffs,

-against-

THOMAS EKELAND, et al.,

Defendants.

- -X

75 C 477

: MEMORANDUM INCORPORATING FINDINGS OF FACT and ORDER DENYING MOTION FOR PRELIMINARY INJUNCTION

Appearances:

PATRICK J. MURPHY, Esq., for plaintiffs,

PROSPER K. PARKERTON, Esq. (DAVID G. TRAGER, Esq., United States Attorney of Counsel) for the Regional Administrator, U.S. Department of Housing and Urban Development, and the Secretary, U.S. Department of Housing & Urban Development

ARLENE SILVERMAN, Esq. (LOUIS J. LEFKOWITZ, Esq., Attorney General, and SHIRLEY SIEGEL, Esq. of Counsel) for the New York State Housing Finance Agency, LEE GOODWIN, as Commissioner, New York State Division of Housing and Community Renewal

CARL E. PERSON, Esq. (J.M.SUSSILLO, Esq., of Counsel) for defendants, SHORE HILL DEVELOPMENT CORP., SHORE HILL HOUSING, INC., LU-MED HOUSING, INC., LUTHERAN MEDICAL CENTER, INC., THOMAS EKELAND, GEORGE ADAMS and HOWARD SMITH

NEIL F. LOVIT, Esq., (W. BERNARD RICHLAND, Esq., Corporation Counsel, of Counsel) for Municipal Defendants

DOOLING, D. J.

Plaintiffs commenced this action on April 1, 1975 for declaratory and injunctive relief to prevent the completion of the construction of an apartment complex for the use of the

elderly at 89th to 91st Streets between Colonial and Shore Roads in the Bay Ridge area of Brooklyn. The ground on which relief is sought in this Court is the alleged failure of the Department of Housing and Urban Development (HUD) to comply with Section 102 of the National Environmental Policy Act (42 U.S.C. 4321, et seq.).

The role of the Federal Government in this project is limited, as will be seen. That federal participation in the project followed upon a Special Clearance by the Environmental Clearance Officer of HUD based on a finding of inapplicability and a finding that there was no significant environmental impact. (HUD has not said that the project involves no major federal action.) Accordingly no Environmental Impact Statement was prepared.

Plaintiff's principal complaint is that the Special Clearance was and is inadequate and insufficient to support the administrative action; that it is not founded upon a reviewable environmental record nor upon adequate review of environmentally significant factors; that no notice was given to parties known to be interested in the project and no opportunity was accorded to them to be heard or to make submissions with respect to the Special Clearance; and that t

Special Clearance and supporting documents themselves were not made publicly available as, plaintiffs allege, is required by Section 102(2)(C), last sentence. See, with reference to giving notice to the public of the proposed major federal action before a threshold determination respecting "significance" is made and an opportunity to submit relevant facts which might bear upon an agency's threshold decision, Hanly v. Kleindiest, 2d Cir. 1972, 471 F.2d 823,836.

I

The Shore Hill project for housing aging persons apparently originated as early as 1970. The site of 2.7 acres - a remarkably large parcel of land to become available in this long-settled part of Brooklyn - had been occupied by a child care institution housed in a former mansion; the structure was destroyed by fire. In 1967 Lutheran Medical Center acquired the property for $1,600,000, with a view to building a new unit of its facility, located some 45 blocks northerly of the site; later the Lutheran acquired, on uniquely advantageous terms, property much nearer to its principal unit, and it is using that property for the planned expansion. The Lutheran, then turned its attention to the proposal to provide housing for the aging.

Application was made under date of March 18, 1970 to the New York State Division of Housing and Community Renewal (DHCR) for mortgage financing, and the Division contracted for that financing with the Lutheran under date of November 28, 1974. The contract provides for $22,550,000 of mortgage financing, to be arranged by the New York State Housing Finance Agency with funds borrowed from the private sector. From the beginning the project visualized only housing for the aging and use of the subject 2.7 acre Bay Ridge site. That site and its utilization for that general purpose have been the defining constants of the project from its beginning. The choices faced have been abandonment of the project or modification of its design and magnitude in buildings and number of dwelling units. Obtaining interest reduction payments through HUD pursuant to Section 236 of the Housing Act of 1937 as amended (12 U.S.C. 1715(z)-1) was evidently contemplated from the outset, and the sponsors recognized that the project would have to clear the National Environmental Policy Act (NEPA) hurdle.

By early 1971 DHCR had reviewed the project through its Project Approval Committee (PAC) and was prepared to move forward. The project then was a 22 story apartment building

MEMORANDUM

to contain 663 dwelling units. In that form the project was reviewed by the Planning Commission of the City of New York, on May 4, 1971. No violation of the zoning law or other local requirements was found and a public hearing held on October 11, 1972, resulted finally in approving the proposal under date of October 11, 1972. At that point HUD executed in favor of the Housing Development Corporation that had been formed for the project by the Lutheran an Approval and Reservation of Contract Authority, pursuant to Section 236, to make interest reduction payments to the owner at the rate of $848,220 a year. However, in consequence of objections voiced at a public hearing held by the New York City Board of Estimate in March 1973, it was recommended to the Lutheran and DHCR that the City Planning Commission reconsider the proposal.

Some months later a revised proposal for a single 16 story building of 667 dwelling units was made the subject of a further public hearing. After consideration of the 16 story project at the City Planning Commission hearing, the proposal was again revised, reaching substantially its present form - a project for two 14 story buildings containing a total of 557 units.

The new and reduced project was submitted to the City Planning Commission on November 13, and the public hearing on it was held on December 3, 1973, to consider both the project and the special authorizations necessary for such a project. The City Planning Commission approved of the project (Exhibit A) and granted special permit authorizations (Exhibit B) following the hearing. The Planning Commission approval described the project as including two residential buildings 14 stories in height and a one story community facility building, the 557 dwelling units to be comprised of 319 efficiency type apartments, 237 single bedroom apartments and a single two bedroom apartment (for use of the superintendent). The project is recited as conforming to existing zoning regulations for a non-profit residence for the elderly, and it recites that the community space to be developed within the project includes a health facility and rooms for arts and crafts, games, community assemblies and a library; that outdoor and recreational space is provided;/that community facilities include bus and subway transportation, and a shopping area within two [long] blocks of the site. The Commission report describes the adjacent Shore Road Park as a recreational

resource in addition to which it mentions the Fort Hamilton Senior Citizens Center somewhat more than a mile distant (accessible by bus), Dyker Beach Park and a public golf course about a mile from the project site. (The site is just northerly of Fort Hamilton, and, of course, the Verrazano-Narrows Bridge.) The City Planning Commission approval described briefly the earlier project for a 22 story building for 664 units and a second proposal for a longer and lower building (667 units in a 16 story building) which had been made the subject of the June 11, 1973 hearing, and noted that at the December 3 hearing there were two available proposals, one for 653 units in two 22 story buildings each with a ten story wing and the 14 story proposal that was approved and which superceded the other. The approval document noted the organizations that were heard in opposition to the project as well as those which favored it and instanced as objections that were made at the hearing

> "1. A high-rise building is inappropriate in an area such as Bay Ridge where low-rise buildings predominate; a low-rise alternative would be more appropriate.

"2. A high-rise building would be a fire hazard to the elderly.

"3. The location of the project is too distant from shopping and transportation."

The report recited that those favoring the project at the hearing emphasized the need for decent living accomodations for the elderly at reasonable rent, the existence of many elderly people needing such habitation in the Bay Ridge area, and the fact that fire hazards in high-rise buildings existed in many structures nevertheless suitable for residence. It is noted that the Commissioner of the New York State DHCR and the President of the Lutheran spoke for the project. In its "CONSIDERATION" the Commission observed

> "The proposal under consideration today was developed to meet the basic concerns of area residents. It is lower than the others and significantly less dense, containing only 557 units in two 14-story towers. This is approximately 100 units less than the existing zoning would allow. The 14-story height will result in a building similar in scale to the large apartment along Bay Parkway just to the north.
>
> "The 14-story structures follow the street lines of Shore Road and 91st Street to fit better with the surrounding community. Care was taken in the site arrangement to retain useful open space and to place the structures so that they would have the least impact on the path of light or air to neighboring

buildings. In addition, a one-story community facility is being provided as part of the project.

"The course of the development of this alternative has been a history of consultation with the community. Four public hearings were held, two of them in the community. The Chairman of the Commission met with members of the local community board on numerous occasions, in the community, both before and after the public hearings. Every community concern has been heard, analyzed, reviewed and given full consideration.

"Clearly, the project is not as low as many people in the area would like. But we would point out, it is not only much lower than when it began (and much less dense) but that it is significantly lower than the building a private development might reasonably (and legally) be anticipated to construct. The site could easily be developed with a 25 to 30 story residential tower -- instead of the 14-story development.

"Another concern expressed at our hearing was that the buildings would not be safe, but would be fire traps. The Fire Department does not anticipate any unusual difficulty in protecting such a structure. In addition, as added insurance, the developer has agreed to incorporate into the project several safety features not required by the Building Code for fireproof construction, such as a smoke alarm system, an elevator override and command system, and an emergency generator.

"In sum, the development has been carefully and sensitively planned and designed."

The Commission noted that the project would, by increasing the supply of housing, facilitate the clearance of substandard areas and thus conform to the overall plan for providing housing facilities for persons of low income and for reconstructing and rehabilitating substandard and insanitary areas of the City.

In January 1974 the City Board of Estimate approved the project.

The communications attached under the "B" tab of plaintiff's motion papers give a very clear idea of the plaintiff committee's opposition to the project, starting at April 18, 1973. In the earliest attached communication the committee expressed opposition to the 16 story project, denouncing it as drab, cramped, depressing and worse than the despised 22 story predecessor; the Committee charged that the sponsor refused to propose, for example, a 12 story, 250 foot building, providing standard apartments at least 900 feet square; the communication intimates that the motivation of the Lutheran is to rescue its investment in the land. At May 30, 1973, the plaintiff committee's counsel appealed directly to the Chairman of the City Planning Commission in particular criticism

of the 16-story structure as 120 feet longer than the 22-story structure first proposed; the letter asserted that over 10,000 Bay Ridge residents opposed Shore Hill as hazardous, insecure, cramped, and isolated housing particularly for the elderly of the community, and it argued that only housing that was sufficiently spacious, safe and in harmony with the community could be accepted. By a communication of June 25, 1973 the plaintiff committee called upon the Lutheran to donate the land to the project and forego its profit; the communication attacked the project as too costly for each unit, and asserted that a high rise building over 8 stories would involve a distinct fire hazard particularly for elderly occupants; that fire department equipment is inadequate above 8 stories; that no security against crime was provided; that no medical or social services were included in the rents proposed, and no funding was provided for such services in the building; that rents were bound to rise above projection and would become totally uncontrolled; that maintenance and sanitation were inadequate; that the elevators provided were inadequate and that the parking space was inadequate. A letter in the same period addressed to Senator Buckley and to the Secretary of HUD requested a denial of Section 236 subsidies charging that

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Shore Hill was inferior housing at extravagant cost that would subject its occupants to unacceptably high risks of criminal attack and fire hazard, and, in its size and density, would be environmentally disastrous to the community. By letter to the City Planning Commission of October 16, 1973, the Committee's counsel protested the November 7, 1973, hearing date as not allowing time for preparation. On October 23, 1973 the plaintiff committee's counsel addressed a letter to Governor Rockefeller asserting that the specific area in Bay Ridge was "a community of single family homes," and that in it "the Housing authorities, in league with the sponsor, [sought] to build a grotesque and overwhelming high rise, consisting of two 22-story buildings." A release of the plaintiff committee dated October 23 (a copy of which was evidently enclosed in the letter to the Governor) returned to the attack on the Lutheran's motives, referred to "watergating" Bay Ridge, and "condemn [ed] the silent conspiracy which worked out the grotesque proposal for twin 22-story buildings with 10 story wings" as a "brazen affront." A further release of October 29 of the committee continued in the same vein.

A letter of the plaintiff committee's counsel dated

November 13, 1973, to HUD at its New York office referred to having sent to HUD under date of October 16, 1973, an outline of some specific community objections to granting a Section 236 subsidy. A letter of December 7, 1973, addressed to each of the City Planning Commissioners challenged the soundness of the Shore Hill financing, arguing that rental levels would be such as to exclude qualification for HUD subsidies under Section 236. Predicting that rentals would have to rise over the years and thus would automatically oust the original tenancy, since the elderly have a flat income curve, counsel for the committee argued that either rental subsidies from a presently unknown source would have to be found or the building be diverted to a new use, since, the letter asserted, unsubsidized tenants would not pay for such cramped and unattractive apartments the high rentals that would have to be asked if the project were to be financially feasible. A switch to multi-family, low rise housing "not altogether unlike" that planned for Northside in Brooklyn, was urged as a possible alternative approach to providing housing for the elderly while preserving the surrounding community. A further release of the plaintiff committee after the December 1973 hearing reiterated approval

of a low rise 250 to 300 unit project to meet the legitimate needs of the elderly in the community who are pressed financially. More specifically, the plaintiff committee regarded low-rise, multi-family or garden apartment complexes as admirably suitable to serve the interests of the aging and the community.

The State of New York DHCR tendered its final application for Section 236 interest subsidy for the Shore Hill project under date of March 11, 1974. The application included the applicant's environmental information on Form ECO-1 (HUD Departmental Policies etc. 1390.1, C.2, Sec.5a(7) and Appendix C-1, 38 F.R. 19,185 and 19,191). The data furnished are very detailed, and would appear, for such a familiar type of project, to cover every imaginable kind of information that could throw light on the possibilities of environmental effect from the physical, social, demographic and safety viewpoints.

Not because of their environmental significance, for that remains the inquiry, but because of the points of criticism made by the plaintiffs, some parts of the submission should be particularly noted:

(a) The project provides 112 on-site parking spaces for the 557 dwelling units. This is within city standards, and

experience, though necessarily slight to date, indicates that it is probably in excess of need for a project for the elderly.

(b) As to the general location the submission correctly states that

> "The project is located in the southwest section of Brooklyn, in an area of low and high rise residential buildings. It is in close proximity to Shore Road Park and because less than 25% of the land (2.7 acres) will be used for the buildings the remaining landscape design will give a park like atmosphere to the entire site."

(c) As to land use in the area, the submission correctly states that

> "The area surrounding the site is generally composed of low rise 2-3 story private homes to the North and East and high rise 6-10 story apartment houses to the South."

(Immediately to the north there is an 11 story apartment building.)

(d) As to the infrastructure, sanitary and storm sewage and electricity were emphasized in plaintiffs' contention. The submission stated that sanitary sewage would be disposed of to existing adequately sized combined sewers, that solid waste refuse would be disposed of by compactors and compacting machine, with cartage by the City Sanitation Department,

that storm sewage and drainage would connect to existing adequately sized municipal sewers and that the electricity would be supplied by Consolidated Edison.

(e) Plaintiffs emphasized that there had been no on site detailed and exhaustive study of air quality problems. On this point the submission indicated that the existing New York City Air Quality Control Board (Environmental Protection Agency) records indicated that in 1973 air in the area was satisfactory 63% of the time and unsatisfactory 37% of the time, that there had been five air inversions in 1973 and that the project would use No. 2 fuel oil for heating and solid waste compactors for solid wastes, and that, in consequence, the project would not noticibly contribute to air pollution. The relevancy of any further study of air pollution for a residential project in such a setting does not appear. No novelty of land use was being introduced that could create an air pollution problem.

(f) With respect to noise levels the submission stated correctly

> "The project is not in the traffic pattern of an airport. highway or open subway. The local streets are used primarily for non-commercial traffic. Therefore posing no vibration problems. Construction of the project is designed to reduce noise impact to the tenants. The floors are 8 inch concrete slabs covered with wood flooring and sound attenuating underlayments, designed to reduce impact and air borne noise passage. Elevators, compactor shafts and door assemblies will be constructed with sound attenuating materials."

(g) The submission correctly, if very generally, describes the community in which the construction will take place in the following language:

> "The community is made up largely of working middle class. Twenty-five percent of the population in the area of Bay Ridge is over 60 years of age and contains many low income retirees. ... Less than 20 percent is under twenty. These calculations are based on 1965 revised census data and statistics published in 1972 by the New York City Planning Commission. The population is overwhelmingly, white ethnic, predominantly Italian, Irish, Scandinavian, Syrian and Jewish. The population of the community is approximately 120,000."

(h) Plaintiffs emphasize the alleged failure to consider alternatives. On this point the submission was

> "Since the community need for Senior Citizens housing is overwhelming and no adverse impact on the surrounding area was indicated. no alternatives were seriously considered. The actual design of the building was based on dual criteria of aesthetics and cost limitations. This site represents the only large undeveloped and available for residential use in the area."

"Alternative sizes and designs" were handled in the submission by stating the history of design changes and ending by saying of the final design that it was decided upon to "afford for the placement of the building for the maximum of light - air and open space and a lower density factor." The passage continued:

> "The City Planning Commission worked together with project architects to explore all alternatives and ultimately produce a configuration wholly compatible with the neighborhood. No adverse environmental impact is anticipated."

(i) Generally as to "Adverse Environmental Impacts," the submission was that

> "There is no long run impact to the Community or will the project require additional services of facilities. The project will benefit the community by preserving the stability of the older residents being able to remain in the area."

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Detailed census data from the 1970 census were presented; they showed (for seven health areas) the distribution of the population between owned and rented dwellings and the number of persons per room; the data indicated that a one person per room average was the most frequent occupancy pattern, and that in none of the health areas were as many as half of the dwelling units owner-occupied. The latter statistic may well be accounted for by a high incidence of two family houses as well as of apartment houses. Census data were also given which showed the distribution of the population of the seven health areas by numbers of persons living in one dwelling unit; 32% lived two persons per dwelling unit; 23% lived one person per dwelling unit; 17% lived three persons per dwelling unit; 14% lived four persons per dwelling unit; the remaining 14% consisted of the families (or groups) of five or more living together in one dwelling. The distribution of the population by age groups was also shown for the City Planning district. The tabulation shows 17% of the population was over 65, and 32% was 55 or over. About 19% were children 14 or under, and about 33% were people 24 years old or younger. Only 35% were in the middle years, 25 through fifty-four.

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The special clearance, effectively dated September 18, 1974, was based essentially on the work of Frank A. Batstone. Mr. Batstone had recently retired from HUD; he was trained as an engineer and had a long experience in City Planning. He had been Environmental Standards Officer for a period of years, and at the time of his retirement was the immediate superior of James P. Flemming who was the Environmental Clearance Officer who signed the clearance of September 18, 1974. Mr. Batstone was recalled and did the study in the capacity of a consultant.

The Special Environmental Clearance Worksheet and supporting attachments (see 38 F.R. 19,192-19,193), some 13 pages in all, center on locating environmental factors, revolving around the impact of imaginable HUD projects on the environment and of the environment on the projects. The discussion is full and fair, considering the physical environment, the infrastructure, traffic, transportation, energy demand, building height, air quality, noise, and, with respect to social environment, the questions of density, recreation, hospital facilities, shopping facilities and aesthetic environment.

Without paraphrasing everything that was said, essentially the conclusions arrived at were those predictably dictated by

the fact that 517 ~~XXXX~~ residential units constructed on ample space, with ample parking facilities, in a primarily residential area do not represent any intrusion of new use, any novelty of service demands on any public or private facility, nor indeed anything that is not inevitably and predictably a consequence of putting vacant land to a conforming use in a built-up area of a great city. Particular attention was given, obviously in the light of the high-rise controversy that had resulted in successive radical modifications of design and scope of the project, to the matter of "density." It was noted that the area was zoned (R7-1) to permit high-rise and proportionately high density development, and that the zoning had brought about the construction of apartment structures ranging in height from 6 and 7 to 11 stories in an area theretofore principally comprising single and two-family residences. It was further noted that the intensity of land use brought about by recent apartment construction was considerable and that these apartment buildings had much higher land coverage ratios than Shore Hill. While it was observed that building on vacant land must by definition increase population density, it was further stated

that the residents were expected to come in some considerable part from Bay Ridge and thus to redistribute rather than much increase the area population as a whole. It was added that under the zoning resolution it would have been theoretically possible to have built a structure which would have produced 2 1/2 times as intense occupation - 2,000 rather than 796 rooms. The acreage density of 295 persons an acre was found to be consistent with city policy and not of significant adverse environmental impact, particularly considering the age of the residents and the nature of their demands on community facilities, the neighborhood, and the infrastructure.

With respect to alternatives, the study relies essentially on the history of design change as indicating a successive adoption of alternatives in response to community pressures and criticisms. The supporting attachment, in dealing with "alternatives," said that the HUD alternatives were limited to providing or withholding the interest reduction subsidy under Section 236 (quaere: see, however Schicht v. Romney, E.D.Mo. 1974, 372 F.Supp. 1270, 1273) and noted that the result of withholding the subsidy would be an increase in rent levels and a reduction in the supply of housing for low and

moderate income elderly persons in the Bay Ridge section of Brooklyn. It was added that the social environmental benefits from providing federally subsidized housing in this area of Brooklyn, where there was a stated need, were considered beneficial and to outweigh whatever other minimal environmental impacts might be involved. It was said further (J, K) that potentially adverse environmental impacts had been dealt with by the scaling down of the original design and layout so as reasonably and appropriately to accomodate the project to the selected site. No need was seen for further modification (in view of the three earlier modifications in design and scale of the project) in order better to reflect neighborhood conditions and yet serve prospective residents' needs while meeting zoning requirements. As to long range effects of the project (L) it was reported that it would not stimulate any long term development or population distribution trends but, on a single project basis, would simply introduce housing for the elderly into an area lacking such a unique facility despite a demonstrated need. It was said that the project would not result in any irretrievable commitment of important resources, and that it was consistent

with the City's plans, programs, objectives and regulations and in keeping with principles of orderly growth, while meeting a critical housing need.

The report discussed the controversy caused by the original project pointing out that opposition had centered around objection to a high-rise building as inappropriate to Bay Ridge where low-rise buildings predominate, the existence of a fire hazard to the elderly in a high-rise building and the distance of the project from shopping facilities and from transportation. The first and third objections, as can be supposed, had already been fully dealt with and were again briefly treated in discussing the objections. The fire hazard objection was discussed in terms of the widespread use of high-rise buildings throughout the City of New York as residences and the complete compliance of the project with building code air and safety requirements. It was then said -

> "The Fire Department does not anticipate any unusual difficulties in protecting the structures. As added insurance, several features not required by the Building Code for fireproof construction have been added. These are a smoke alarm system, an elevator override and command system and an emergency generator."

The builder has testified that the building is a fireproof building which will have fire walls at 20 foot intervals throughout the building and fireproof partitions at 10 foot intervals. It will be supplied with a standpipe system with a hose connection and hose at each station on each floor and an auxiliary pump for water delivery. Plaintiffs suggested that the elderly population could not manhandle the hose of a standpipe system into service. However, the project is for aging and aged persons and the ages might be 62 and upward. It is not to be supposed that the aging population of the building would include the infirm to any great extent. A smoke alarm is provided in each apartment and in certain of the high fire-risk areas of the buildings a sprinkler system exists.

While provided essentially for security and emergency use, an additional safeguard against fire is the provision in each apartment of a neighbor alarm system. When the alarm is activated a warning light is lighted at a central station from which assistance can then be dispatched to the distressed apartment.

The conclusion of the report expresses the view that, while the final project plan resulting from a series of

modifications made to meet criticisms directed at the high-rise development did not meet all the local objections, it had in its final form configurations compatible with the neighborhood; the report concluded further that viewed against the federal, state and city objectives of providing decent, safe and sound housing in a suitable living environment, the project accomplished the objective without significant adverse impact on the environment.

As the ECO-3 worksheet indicated, it had not been anticipated that an A-95 review from the local authority would take place (see 1390.1, Section 5a(8), 38 F.R. 19,186). However, in addition to being approved by the City Planning Commission, as above explained, the City Planning Commission was requested by the Tri-State Regional Planning Commission to prepare an A-95 Review for Shore Hill, and that was done. The Office of Environmental Impact of the City of New York, in accordance with the procedure established in Executive Order No. 87, made the evaluative review, and, while the text was not presented at the hearing, under date of September 6, 1974, the City Office of Environmental Impact reported that the project had been evaluated, based on the information

submitted, "as not having a significant adverse impact on the physical environment." (See Exhibits H and I)

With reference to infrastructure particular reference was repeatedly made to the adequacy of sewage disposal. This was the subject of particular inquiry to the City Department, and it furnished the information on permitted flows in the 91st Street 12 inch combined sewer and the Colonial Road 18 inch combined sewer and also found, upon review of the sponsor's sanitary engineers' data, that there should be changes in them; those changes the engineers undertook to make. This exchange was before the Environmental Clearance Consultant and the data supplied were used in his infrastructure discussion with the special note that the plans called for an on-site retention system under the parking areas which would hold surface waters (storm waters) and not release them until after 24 hours.

The history of the project, including particularly the modifications of it in response to public criticism and under the evidently watchful eye of the City Planning Commission and the Board of Estimate, resulted in presenting the project to HUD for environmental impact review as a

project the supposed impact of which had already been much attenuated to meet public, and, very particularly, community criticism, including those of the plaintiff committee.

II

Plaintiffs contend in this Court (a) that the NEPA procedures adopted did not comply with the law and were procedurally inadequate; (b) that the project substantively violates NEPA in that it poses grave threats to the health, well-being and environmental rights of the Bay Ridge community; and (c) that the sponsors and, apparently, the State authorities have resorted to deceptive and fraudulent practices and proceeded on the basis of false, fraudulent and misleading information.

The claims based on fraud and cognate charges revolve around the idea that the whole project had no genuine driving force other than the Lutheran's wish to be bailed out of its expensive purchase of the 2.7 acres of Bay Ridge land. The Lutheran borrowed $1,000,000 against a mortgage to buy the land in 1967. The fraud and related charges were not supported by evidence, and are completely answered by the affidavit of Commissioner Lee Goodwin of the New York State

DHCR. The plaintiff committee's communications attached at tab B of plaintiffs' own papers thoroughly, if, perhaps, unfairly, aired the charges during the procedures that antedated the March 11, 1974, final application for the interest subsidy.

Nothing whatever has been advanced to support the charges made in paragraphs 32 and 33 of the complaint (fraud in the Section 236 application). It would have been a happy circumstance if the Lutheran had had the affluence and the right to contribute the land to the project. The Lutheran is itself, however, a non-profit organization, and it, no doubt, renders a range of services to the indigent typical of non-profit hospitals, but it may be questioned whether the range of charitable uses open to it includes contributing capital to the financing of housing for the elderly some of whom might be indigent or at least in need of public assistance.

Similarly, the allegations of paragraphs 34 through 41 (fraud on the State and HUD in procuring the loan and subsidy contracts) are unsupported by evidence.

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The reference in paragraph 38 to Section 8 of the and 1974 Act,/to that Act, as in some way repealing or superseding Section 236, is simply mistaken. Public Law 93-383 revised the Housing Act of 1937 and did not repeal it, nor does Section 8 of the New Public Law (42 U.S.C. 1437f) supersede action already committed under Section 236 of the Housing Act of 1937 (12 U.S.C. 1715z-1). The same Public Law 93-383 which enacted 42 U.S.C. 1437f (Section 8) also amended 12 U.S.C. 1715z-1 (Section 236) of the earlier Housing Act of 1937, and even more specifically, amended sub-section (f) of that section by increasing its expenditure authorization in the further sum of $75,000,000 on July 1, 1974.

The complaint comes down to its paragraphs 42 through 44, taken as charging a failure to proceed correctly under NEPA and the implementing regulations and guidelines adopted under it. Plaintiffs' affidavits reiterate essentially these claims of the complaint, alleging again in conclusory terms failure to comply with the procedural steps required by NEPA and contending (a) that the project gravely threatens the life and safety of the tenants and the surrounding community because of the lack of adequate fire safety equipment,

fire and smoke alert systems and other security systems necessary for an aging population and the surrounding home owners, and (b) that construction of the project will damage plaintiffs and the public by degrading the environment, destroying the neighborhood aesthetic and causing air, noise, water and light pollution and serious sanitation sewage, electric power and traffic disorders. No factual evidence supports any of these assertions. Their self-evident extravagance completely answers them as assertions. The gist of the motion is the alleged failure to comply with the procedural requirements of the Act.

The surviving points made and insisted upon are (a) that the federal defendants in granting the Special Environmental Clearance did not make any independent assessment of the environmentally relevant factors but relied upon secondary materials, and upon generalized published or otherwise publicly available data that had no specific application to the particular project under review (see 1390.1, Sec.5a(3), (5), (7), 38 F.R. 19,185) and (b) that no public notice of the application was given by HUD and no opportunity was given to contest the propriety of granting a Special Environmental Clearance. Hanly, supra, 471 F.2d at 836.

(a) It was insisted that no genuine field study was made of the sewage disposal capabilities of the City system, nor of the police and fire protection available through the City departments nor of the air, noise, waste removal and traffic increase factors. Certain of these must be put aside at once as either trivial or not genuinely involved in an appropriate environmental survey. Internal fire protection that is, the protection against fires supplied by structural elements and in-building alarms was surveyed in the only possible and intelligent way, from the builder's undertakings as represented to HUD. These have already been described and will not be repeated; they are self-evidently more than adequate. The commentaries concerning police protection, fire department protection and waste removal are irrelevant. The suggestion that the opening of 517 modestly sized apartments in the Borough of Brooklyn could put a strain on the City police, fire or sanitation departments is so unsupportable as to call in question the good faith of presenting the point. The redeployment of police, fire and sanitation resources in response to the ever changing demands of an ever changing City is a condition of the continuance of urban existence. Moreover, the tenants will not be

conjured from outer space but are expected very largely to come from other parts of the community and of the City; it would be all but impossible to show any increased demand for fire, police or sanitation services that was not compensated by a dimunition in demand elsewhere in the systems.

The same is in a measure true of what is said about air and noise pollution. It can hardly be suggested seriously that the addition of 517 small dwelling units on 2.7 acres of land overlooking the harbor in a residential neighborhood could detectably increase air pollution in any substantial part of the ambience. The applicant and HUD both treat the air pollution problem as seriously as they can manage; the effort to find a possibility of adverse effect on ambient air proves futile; it produces only the impression that the item had to be dealt with because it was in the forms, no matter how ludicrously so in the circumstances of the present case.

The one point that could be made usefully was made in stating explicitly that No. 2 fuel oil would be used. To the extent that it is suggested that it was necessary to determine the air pollution levels in Bay Ridge in order to

avert any risks that the elderly were being settled in an unhealthy region, the suggestion does not merit consideration. However, HUD made a site visit, and to anyone who did so it would be evident that, as New York City goes, the atmosphere is markedly salubrious. The site overlooks a marginal park between the expanse of the harbor and Shore Road. At the very margin of the harbor is the Belt Parkway, but no evidence was adduced to indicate that it was used by commercial or industrial traffic. As can be seen to some extent from the photographs in Exhibit J, although they are certainly not intended for this purpose, there is also some greenery in the area along streets, and while Shore Road is now largely bordered by apartment dwellings, the back area is in the main a neighborhood of one and two family houses and small apartment buildings. After a site visit, no matter how brief, it would not be possible to justify the expense of ordering a detailed survey of air pollution in the area. Common sense dictated reliance upon the generalized data available through the City Environmental authorities.

Plaintiffs' charges with respect to the absence of a noise survey are similarly without substance. Whatever may

or may not have been the genuine significance of the noise factor in the controversy over the Forest Hills project, nothing has been brought forward on the present motion to suggest the existence of a genuine noise factor. The streets bordering the project, Colonial Road, 91st Street, Shore Road and 89th Street are not free of traffic; few streets in this City are. But they are not arterial or shopping streets. The Belt Parkway is a heavily travelled highway, but its distance from the project, not precisely shown in the evidence, sufficiently safeguards the apartment project from noise intrusion. All this is patent from even a brief site visit. The project as a source of noise significantly affecting the neighborhood can not be regarded seriously; apartment dwellings in the area are numerous and are bound to increase in number and size particularly along Shore Road. Nothing has been brought forward on the motion to indicate that it would have been wise to mount a noise study.

The sanitary and storm sewage and drainage matters were more than adequately investigated and checked, as indicated above. On electric supply, Consolidated Edison was sufficiently quizzed by HUD directly. Earlier service breakdowns in the area were explained and the steps taken to

supplement grid capacity and backup were stated. No excuse for further investigation was presented.

The project's history and the detailed disclosures made to HUD in connection with the environmental clearance procedures amply warranted HUD in proceeding as it did with a review of the kind and scope it made.

Plaintiff criticizes the review report as merely accepting the submissions made in the applicant's ECO - 1. The weakness of that assertion when put as an objection is that plaintiff suggests no information that belies any part of the ECO - 1 submission, nor indicates any respects in which it was misleading or inadequate. On the contrary, it gives every indication of careful and conscientious preparation in full and fair response to a carefully designed and searching form. The response is neither superficial nor evasive. That the submission of such material expedited and simpliried the task of HUD does not furnish a ground of criticism. It can at most be said that HUD trusted the trustworthy.

HUD is required to conduct an "independent environmental assessment and evaluation" (1390.1, Sec. 5a(7), 38 F.R. 19,185), but that does not translate into a responsibility

for conducting exercises in supererogation. Verification of the ECO - 1 data is required (ibid.), but, again the Shore Hill submission was essentially a self-verifying disclosure readily and easily reviewed from an office chair. The independence of assessment and evaluation necessarily lay not in duplicating field work but in exercising judgment on the data.

Plaintiffs argue that HUD should have done all that is specified in Section 102(2)(C). The cases are clear, as is the very theory of the statute, that the requirements of (C) are applicable only after it has been determined that the agency is confronted with a major federal action and one that significantly affects the quality of the human environment. Only then is there the occasion to make a detailed statement responsibly prepared on the five points included in (C) and to give public notice as required by 5 U.S.C.552 (the Section of the Administrative Procedure Act dealing with public information). Hanly v. Kleindienst, supra, 471 F.2d at 830.

(b) The federal defendants did not, in the language of Hanly, give notice to the public of the proposed major

federal action, and an opportunity to submit relevant facts which might bear upon the agency's threshold decision. Plaintiffs emphasize not only the language from Hanly (followed in the almost exactly parallel Chicago Detention Facility case, Continental etc. Trust Co. v. Kleindienst, N.D. Ill. 1973, 382 F. Supp. 107, in effect aff'd. First Nat'l Bank v. Richardson, 7th Cir. 1973, 484 F.2d 1369), but the controversial history of the project as requiring the "notice and opportunity to submit" procedure outlined in Hanly (see 1390.1, Sec. 5a(3), 38 F.R. 19,185; cf. CEQ Guidelines, Sec.6 (a)(vii), (d), 10(f),(g), 36 F.R. 7725-7727; CEQ Directive, 40 C.F.R. § 1500.2(b)).

It is difficult to understand the failure to follow the language of Hanly. It is noted that HUD Circular 1390.1 was approved and published after Hanly (38 F.R. 19182 of July 18, 1973) and appears to omit the Hanly notice requirement. In another kind of case the failure to follow the counsel of Hanly, at least in a project in this Circuit, could create a very serious problem. In the present case a number of factors converge to prevent the omission from being fatal.

In the first place, the main environmental battle was - and properly - fought out in the state and municipal arenas, and the project, although almost certainly ultimately dependent for financial feasibility on the federal interest subsidy, was a state project of essentially local concern financed through a state agency under the direct oversight of the State Commissioner of the Division of Housing and Community Renewal. The sponsorship was non-profit sponsorship. The long course of the wide open public evolution of the project materially modified it in the direction of meeting ~~the~~ public criticisms, including those of plaintiffs. The ultimate resort to HUD, once the project had received state and city approvals, was well known, and the plaintiff committee's criticisms were transmitted to HUD in advance of the final application (see tab B, letter of November 13, 1973, and references in it to a forthcoming meeting with HUD and to the letter of October 16, 1973, outlining objections; the undated letter, also under tab B, to the Secretary of HUD and to Senator Buckley may be the letter of October 16,1973). The clearance study dealt fully and fairly with the existence and bases of the criticisms, and, finding that the project

had been modified to meet the criticisms on a fair middle ground, approved it. The criticisms at their best were only marginally "environmental" in orientation; very largely, they seem rooted in understandable but not countenanceable considerations of bare neighborhood preference. And finally, the material advanced in the present proceedings, if placed before HUD in advance of clearance, could not in reason have commanded a conclusion that an Environmental Impact Statement was necessary.

It is necessarily concluded that it is unlikely in the extreme that plaintiffs will prevail in the case, and is even less likely that, were they to prevail, it would be to an end more useful than to require a redrafting of the Special Clearance or the preparation of an Environmental Impact Statement which almost certainly would have to reach the same ultimate conclusions. The motion for a preliminary injunction must, therefore, be denied. It is noted that the project is already well advanced in cost and in physical progress. The State Housing Finance Agency has already expended $3,439,218 and the general contractor has been paid $1,492,868. Payments to the contractor continue at about

$350,000 a month. Any arrest of the project by injunction pending preparation of an improved Clearance or an "EIS" would tend to throw much work planned for July through September into the winter months, when costs for weather protection increase sharply, by an amount in the order of $75,000 a month. In these circumstances, it would be most unwise to grant injunctive relief in the absence of something approaching confidence that retracing the NEPA procedural steps would result in a different ultimate conclusion on environmental impact. On the whole record there can only be the opposite confidence, that the outcome will be the same because, despite the possible procedural defect, the plainly correct clearance decision was made.

It is accordingly

ORDERED that the motion for a preliminary injunction is denied.

Brooklyn, New York
July 25, 1975

U. S. D. J.

NOTICE OF APPEAL.

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

----------x

BAY RIDGE ACTION COMMITTEE, INC., VINCENT DeANGELIS, FELIX CUCURU and PAUL LANG,

Plaintiffs,

-against-

THOMAS EKELAND, GEORGE ADAMS, HOWARD SMITH, SHORE HILL DEVELOPMENT FUND CORP., SHORE HILL HOUSING, INC., LU-MED HOUSING, INC., LUTHERAN MEDICAL CENTER, INC., NEW YORK CITY DEPARTMENT OF CITY PLANNING and JOHN ZUCCOTTI, as Chairman of the CITY PLANNING COMMISSION OF THE CITY OF NEW YORK, THE NEW YORK STATE HOUSING FINANCE AGENCY and HON. LEE GOODWIN as Commissioner, NEW YORK STATE DIVISION OF HOUSING AND COMMUNITY RENEWAL, S. WILLIAM GREEN as Regional Administrator, U.S. DEPARTMENT OF HOUSING & URBAN DEVELOPMENT and HON. CARLA A. HILLS as Secretary, U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT,

Defendants.

Civil Action
No. 75 C 477

NOTICE OF APPEAL

----------x

NOTICE is hereby given that BAY RIDGE ACTION COMMITTEE, INC., VINCENT DeANGELIS, FELIX CUCURU and PAUL LANG, the abovenamed plaintiffs, hereby appeal to the U. S. Court of Appeals for the Second Circuit from the order of the United States District Court For the Eastern District of New York denying the motion for preliminary injunction, entered in this action the 25th day of July, 1975.

PATRICK J. MURPHY
Attorney for Plaintiffs
Office & P. O. Address
425 Park Avenue
New York, New York 10022
Tel. No. 212 - 371 - 5400

Dated: August 14, 1975

UNITED STATES COURT OF APPEALS
FILED
DEC 10 1975
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

ADDRESS REPLY TO
UNITED STATES ATTORNEY
AND REFER TO
INITIALS AND NUMBER

CIS:PKP:ec
F. #752012

United States Department of Justice

UNITED STATES ATTORNEY
EASTERN DISTRICT OF NEW YORK
FEDERAL BUILDING
BROOKLYN, N. Y. 11201

December 9, 1975

B
P/S

Mr. A. Daniel Fusaro
Clerk of Court
U. S. Court of Appeals
for the Second Circuit
Foley Square
New York, New York 10007

Re: Bay Ridge Action Committee, Inc. v. Thomas Ekeland, et al., Docket No. 75-6076

Dear Mr. Fusaro:

Please find enclosed four additional copies of the affidavits and exhibits of defendants-appellees Hills and Green which were served and filed in the motion for a preliminary injunction in the District Court and are a part of the record on appeal. The affidavits were included in the appendix but the exhibits were not. Because the special environmental clearance worksheet, which is located under tab six of the exhibits and was admitted in evidence on the motion as Exhibit "E", is referred to in the brief of defendants-appellees Hills and Green, these additional copies are being submitted for the convenience of the Court.

Very truly yours,

DAVID G. TRAGER
United States Attorney

By: Prosper K. Parkerton
PROSPER K. PARKERTON
Assistant U. S. Attorney

Encls.
a/s

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high-rise development. This zoning has resulted in the construction of apartment

CIS:PKP:ec
F. #752012

December 9, 1975

Mr. A. Daniel Fusaro
Clerk of Court
U. S. Court of Appeals
for the Second Circuit
Foley Square
New York, New York 10007

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DAVID G. TRAGER
United States Attorney

By:

PROSPER K. PARKERTON
Assistant U. S. Attorney

Encls.
a/s